

THE
WORKS
OF THE LATE
JOHN MACLAURIN, Esq.
OF DREGHORN:
ONE OF THE SENATORS
OF THE COLLEGE OF JUSTICE,
AND
F. R. S. EDINR.

“Chaque homme écrit ce qu’il pense dans ses meilleurs moments, & ras-
semble à un certain âge les réflexions les plus épurées qu’il a eues pen-
dant sa vie. Avant sa mort il en forme un livre plus ou moins gros,
selon sa manière de voir & de s’exprimer : ce livre est l’ame du de-
funt.

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IN TWO VOLUMES.

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VARIOUS SUBJECTS.

THOUGHTS

VARIOUS SUBJECTS

BY A. A. A. A. A.

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THOUGHTS

ON

VARIOUS SUBJECTS.

Of the Court of Session.

I HAVE all along thought, the Court of Session is not composed of too many Judges, but the Fifteen are not properly employed and distributed. This Court alone, does, in this country, the business that is done in England by the Common Pleas, King's Bench, Admiralty, Doctors' Commons, Chancery, and, I may say, Exchequer too; for there is a way in England of bringing into that Court causes that do not concern the Revenue; so that it is a mistake that the English have fewer Judges than we. They have many more, for, into the computation must be taken, not only the Twelve Judges, but the Chancellor, the Master of the Rolls, fourteen Masters in Chancery,

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(who do a great deal of the business that is done in the Court of Session by the Ordinaries,) and also the Judges who determine maritime and consistorial causes. How many of these there are I do not know ; but it is plain, that, in England, they have at least thirty Judges for the business which, in this country, is done by fifteen. But they have not near so many Judges in any one court ; they have not, I believe, above four in the King's Bench, Common Pleas, and Exchequer ; whereas the Session consists of fifteen, and nine are necessary to make a quorum.

In that respect, I apprehend they are right and we wrong. Many of the causes that come before the Court of Session are trifling, and attended with no difficulty ; hence the assembling so many Judges every day is unnecessary and improper, as one half of them might be spared, and better employed.

It has been proposed, as we certainly have too much to do, to divide us into Inner and Outer-house Judges, and I think that plan not a bad one. I proposed myself, some years ago, another which I thought rather better,

better, and which has this great advantage, that if it be found not to answer, the former method may be resumed at pleasure. This plan divided the fourteen ordinary Judges into two courts; the one to sit two, the other three days of the week, with corresponding Ordinaries; the business to be apportioned between them as equally as possible, by giving each a certain set of causes, *e. g.* the one, the suspensions, advocations, regulations, and the reductions; the other, the ordinary actions and causes that overleap the Outer-house.

Both these plans require, as would others which might be suggested, that all those appointed Judges be men of abilities, both of body and mind, and, consequently, that they be pensioned off when they fail in either.

I have now had near five years* experience as a Judge of the Court of Session, and I am perfectly clear, that it ought to be divided into two at least; and I have no doubt that sooner or later this will be done, as I find it

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now

* Written in 1792.

now relished by many that were at first against it. In that way, justice would be administered with double dispatch, Judges would not be oppressed, nor causes hung up long, as they frequently are, from the lawyers not being able to overtake all they undertake. Indeed there would be so much time as to enable us to determine a great many causes on hearings, and so save the great expence and delay occasioned by writing and printing. Mr Dunning said, that, in Scotland, a lawyer wrote all he spoke, and printed all he wrote ; and this is literally true of every cause which runs the course of ordinary litigation. But what is still more singular, absurd, and oppressive, is, that all that has been written and printed, must be written over again in what is called the extract of the decree, which puts parties to an incredible and perfectly unnecessary expence. In all cases, therefore, a summary, or abbreviate of the procedure ought to suffice ; and for the fees of this, in every process that comes into Court, the clerks ought to be secured ; and if the matter were put upon that footing, there is no doubt that the clerks would make more than they do at present ; for, in
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a multitude of cases, no extract is ever taken. As to the argument, that ingrossing the procedure shews the grounds on which the Court went, it is a mere pretence; the printed papers do that sufficiently in the House of Lords: these are always sent to London, called for, and read by those who determine the appeal. In this country, the process itself can always be got; so that any person desirous to see the arguments *hinc inde*, may be satisfied for a shilling.

CON

CONSIDERATIONS

ON THE QUESTION,

How a JUDGE, whose Opinion has been over-ruled, ought to vote in subsequent and subordinate Questions?

AND

How the Vote ought to be stated in a numerous Court?

PLINY, in one of his epistles*, states the following case to have happened in the Roman Senate:—Afranius Dexter having been found killed in his bed, and it being uncertain whether he had been slain by himself, or by his slaves; and if by them, whether from malice, or by his own command; it was referred to the Senate to determine what judgment ought to be pronounced upon them. Some were for death, some for banishment, and some for acquittal, of which last class Pliny was one. That class being more numerous than any of the other two, though not so numerous as the

two

* B. 8. Epist. 14.

two together ; he insisted that the two should not be allowed to join against the third, but that they should be separately counted ; and, after a struggle, this was agreed to, and the slaves acquitted. But the case being new, (which is very surprising,) he, in the epistle alluded to, desires the opinion of his friend Aristo upon it.

It should seem that Pliny was in the wrong ; as it happened, his method was favourable to the merciful side, but it might have happened otherwise, *e. g.* If 21 had been for death, 20 for banishment, and 20 for acquittal, the lives of the slaves, according to his doctrine, were lost ; which most certainly they ought not to have been, there being 40 to 21 against death, and it being perfectly uncertain, till the question be properly put, Whether they ought at all to be punished?

In order to put the question properly, the grounds of the opinions must be attended to. What these were, Pliny does not inform us ; but it is plain, that those who were for death, must have presumed that the
slaves

slaves had murdered their master: those who were for banishment, must have held that they had not murdered him, but that they had killed him by his own command, and were culpable for doing so: those who were for acquittal, must have held, that the slaves had killed him, but that they had done so by his own command, and that they were not culpable for doing so. The supposition that he had been killed by some other person is excluded by the state of the case, and, I suppose, by the *Senatus consultum* on which they were tried, which presumes that the master has been killed by his slaves, so that the only defence pleadable is his own order.

If the question in this case be put in general, What judgment ought to be pronounced? If there be 21 for death, 20 for banishment, and 20 for acquittal; according to Pliny, the lives are lost; which is grossly absurd and unjust, for there are 40 to 21 against death. The first question ought to be in this case, Are the slaves to be held guilty of murder or not? It will carry not by 40 to 21.

Then

Then the next question is, Punishable or not? How this will carry is uncertain; for it being established by the preceding determination that the slaves had not murdered their master, those who vote for their death, on the contrary supposition, may think that they were not at all culpable for killing him by his own command, and on that ground join those who are for acquittal.

If they, or one of them, do, acquittal carries, by 41 to 20; but if they do not, and it carries Punishable, then the question must be, What shall the punishment be?

In this question, What shall the punishment be? it may be thought that those who voted for acquittal ought not to vote at all. If they do not, I apprehend they do wrong, as the consequence may be, to subject to a very heavy, instead of a slight punishment; for the 21, who were for death, divide; some of them voting for imprisonment, and some, or one of them, for banishment: if those who were for acquittal stand off, it will carry for Banishment; whereas if they vote for the slightest punishment, that

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carries. This, I apprehend, they ought to do. It may be said, they cannot, with a safe conscience, as their opinion is against any punishment: but this is not solid; they vote for punishment upon compulsion, and a new state of the case: they ought to do justice as much as they possibly can, that is, be for the least punishment, as that comes nearest to what they think complete justice; and if they do not do so, they commit very great injustice; as it is owing to their standing off, that banishment is inflicted in place of imprisonment.

Aulus Gellius, and Quintilian, Declam. 365, state an imaginary case as a rhetorical exercise, What is to be done if, of seven judges, two be for banishment, two for a fine, and three for death. If it has been previously fixed that the person accused is guilty, and must suffer some punishment, the question may be put in general, What shall that be? but then all the votes for a lesser punishment than death, though they differ as to the degree, must be accumulated against those for death. In the case stated by Gellius, there are four to three against death.

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If, however, there be a possibility of those for death, on their opinions being over-ruled, voting for the least punishment, there ought to be another question; if there be not, it follows from their opinion, that, *a fortiori*, they must be for banishment, and that must be the punishment.

It should seem that a Judge ought to vote against his opinion in certain cases. I gave one instance under Pliny's case; another may be given here. Those who vote for death, though over-ruled, ought not to stand off in the second question, unless their opinion be, that, if not guilty of a capital crime he is not guilty at all; they ought, on the second question, to vote for the next severest punishment, that is banishment, being over-ruled as to death: they cannot do what they think complete justice, but they ought to do as much justice as they can; for the same reason, that those who voted Acquit, if over-ruled, ought to vote for the mildest punishment.

In Pliny's case, the question was improperly put, What judgment shall be pronoun-

ced ? for it does not make way for all the opinions. If 21 for death, 20 for banishment, and 20 for acquittal ; no doubt death is excluded, for there are 40 to 21 against it : but in the same way it may be said, that the accused must be punished with banishment, or in some way or other, because there are 41 to 20 for punishment. The conclusion, however, is not just as to the last; for the reason assigned, that the 21 may have thought, that, if the accused were not to be punished capitally, they ought not to be so at all; being of opinion, that killing the deceased by his command was not criminal at all.

If they be over-ruled, and it be determined that the deceased was killed by his own command, the 21 ought to vote in the next question, Punishable or not, and vote Not. This is not inconsistent with their former opinion, for the case is altered by the judgment finding the accused not guilty of murder, a new case is presented, and upon that they ought to determine. For the same reason, those who have voted for acquittal, if they be over-ruled, ought to vote for the flight-

slightest punishment, for a new case is presented to them too. It may be said, How can they vote to punish those whom they think innocent? I answer, They have voted not to punish him; which discharges their conscience: but having been over-ruled, and it having been established by a preceding judgment that he is not innocent, and that he must be punished; a new case, or *species facti*, is presented to them; and they ought to determine on this case as to them seems proper, in the same way as in the former. On this ground, it should seem, that it may be laid down in general, that the Judge, whose opinion is over-ruled, ought to go on voting, in all subsequent questions, so as to come as near to his own opinion as he can.

The question ought not to be put in such a case, What shall the judgment be? so as to make way for three different classes of votes; one for death, another for an arbitrary punishment, and a third for acquittal; because, the ground of each of those opinions is quite distinct and different from the rest, and consequently justice cannot be done

done without ascertaining which of them is right, and ought to prevail, and that cannot be done without taking in all the opinions or judgments.

It is therefore necessary first to determine, Whether the accused have been guilty of murder, or of a capital crime? If it carry Not, it next must be determined, Whether they have been guilty of any crime? If it carry that they have, then it may be thought that a general question may, and ought to be put, What shall the punishment be? and not, Shall it be banishment? Shall it be imprisonment? &c. for now there can be no difference in the ground of opinion, all are agreed, and must be held to agree as to the ground, which is guilt. As to the degree of punishment, that does not depend on any particular ground, but upon a variety of circumstances and ideas.

But suppose that 15 are for banishment, 10 for imprisonment, and 10 for a fine; is there not the same reason for dividing the question, or holding that the two last must be accumulated against the severer first?

first? There is a clear majority against banishment; therefore the other question ought to be put, Imprisonment, or a fine? and it will carry for what is thought the severest: but it may be thought that the degree of punishment is, not strictly speaking, a question of judgment; it depends on a variety of considerations that are not grounded on justice, *e. g.* the circumstances and situation of the pannel, public utility, and example, &c. and therefore such punishment is called an *arbitrary* punishment, which implies, that it is not to be regulated by principles or grounds.

Voet*, upon the authority of a single text, states, that, by the civil law, if, of three arbiters, or judges, one be for awarding to the pursuer L. 15, another L. 10, and a third L. 5, decree can go out for the L. 5 only, because, *majori inest minus*, and they all concur as to L. 5; and he disapproves of the opinion of another Commentator, (Groneguen,) who holds that it ought to go for L. 10.

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* Comm. at tit. de Receptis, n. 19.

It appears to me that this question cannot be determined in the general, and that, to resolve it, the *grounds* of the different opinions must be known and considered. It is very possible that *majori inest minus* does not apply, *e. g.* If the claim be founded on three different obligations, one for L. 15, another for L. 10, and a third for L. 5; and one opinion be that the first claim is well founded, the other two not; the second, that the claim for L. 10 is well founded, the other two not; and the third, that the claim for L. 5 is well founded, the other two not:—It is obvious, that in such case, he who is for L. 15 is not for L. 5, nor he who is for L. 10. The question ought to be put on each separately, and it will carry two to one, That not one of the claims is just, and that the defender must be discharged of them all.

But if the claim be made, or arise from one obligation, *e. g.* If the value of a horse be referred to three men, and one says L. 15, another L. 10, and a third L. 5, it is clear that in this case *majori inest minus*, he, who thinks the horse worth L. 15, certainly thinks him worth L. 10, and worth L. 5 too; he

he who thinks him worth L. 10, thinks him worth L. 5; but he who thinks him worth L. 5 does not think him worth either L. 10 or L. 15; so there are two opinions to one that he is worth L. 10, and that sum ought to be awarded.

I have looked into Groenewegen, who does not treat the question fully or accurately; he says however, justly, that whether *majori inest minus*, must depend on the *intention*. He holds that the opinions cannot have effect. This is clearly wrong: effect is given to them in the first case stated, by putting the question, as I have done, on each ground, which brings out an absolution. He says, in practice, the middle opinion is followed. This is very right in the second case, but in the first must be unjust; being contrary to the majority of judgments, which is for absolution.

With regard to a Judge voting against his own opinion, I heard lately a case stated that deserves to be considered:—An action having been brought for setting aside a deed on the head of fraud, some of the Court

were for dismissing it with costs, but a majority set the deed aside: they differed, however, among themselves when the question came to be as to costs; some of them thinking that there were circumstances which ought to save the defender from costs. Whether ought the minority to vote in this question? and if they do, in what way? Supposing them to be of opinion, that if the deed ought to be set aside, costs follow of course, the circumstances alluded to not being sufficient to free from them.

I have laid down in general, above, that a Judge whose opinion has been over-ruled ought to vote in subsequent questions, so as to come as near to his opinion as he can: *e. g.* If he was for Acquittal, and it carry to Punish, he, in the question, What shall the punishment be? ought to vote for the mildest; and from that principle it seems to follow, that he ought to vote against expences in the case last put. The maxim *res judicata pro veritate habetur*, does not apply here; it is a presumption, only a just one, when the merits cannot be known, but it must yield to truth; and the Judge who vot-
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ed against the determination, ought to pay no regard to it in subsequent and subordinate questions.

In March 1776 the following case occurred before the Court of Session:—A Gentleman having been admitted to the roll of the Freeholders of Fifeshire, a complaint was preferred, complaining of his having been put upon the roll, and praying to have his name expunged; upon two grounds,---
1st, That the estate on which he had claimed being, as was alledged, not a proper, but improper wadset, did not constitute a legal qualification. 2^{dly}, That his seisin was null. The mode of putting the question was not argued in the papers, on which the Court judged 7th March 1776. A majority of the Court, (consisting of thirteen Judges,) were of opinion, that upon one or other of the grounds the Freeholders had done wrong in admitting him to the roll: but his counsel having moved that the question should be put separately on each point, that mode was adopted; and it carried by a majority of nine to four to repel the objection to the seisin, and by the same majority, to repel that to the form of the right.

Against this judgement a reclaiming petition was written and printed*, but not moved, or even (I believe) preferred; the committee of the House of Commons, that was to try the Fifeshire election, being to meet in a few days. The question, as to the propriety of putting the question separately, was canvassed in that committee. The argument against it is thus stated in Douglas, vol. iv. p. 217, 218. "The impropriety of this
 " mode of deciding a cause cannot escape
 " the committee, and the numerous and
 " gross inconveniencies which would flow
 " from it will occur, without being particularly pointed out. The business of a Court
 " of Judicature is to determine the rights
 " of the parties to the suit, not to moot and
 " decide abstract points of law: but according to the method adopted in this case, it
 " is evident, that a party might have the
 " whole Court, without one dissenting voice,
 " in his favour, and yet the judgement be
 " given for his opponent. Every separate argument might be made the ground of a separate question; and if there were eleven
 " points,

* March 8th, 1776,

“ points, or arguments, eleven Judges, and a
 “ single Judge against the opposite party on
 “ each point, and therefore each of the ele-
 “ ven, upon a *general* question, obliged in
 “ conscience to vote against him; yet ten
 “ being for him on each *separate* point, the
 “ decision would be in his favour. The
 “ Courts of law in England, aware of this
 “ manifest absurdity, never separate the
 “ points of a cause when they come to give
 “ judgment; but each Judge, acting upon
 “ his own reasons, and delivering those rea-
 “ sons if he so thinks fit, the judgment is gi-
 “ ven *generally* for the Plaintiff or Defend-
 “ ant.”

The argument in support of it is thus stat-
 ed, p. 224, 225: “ When that mode of pro-
 “ ceeding ought to prevail, and when it
 “ ought not, must depend on the particular
 “ circumstances of the case: but it would
 “ be easy to put cases where a degree of in-
 “ justice and absurdity would be the conse-
 “ quence of not separating the questions
 “ equal to what the counsel on the other
 “ side suppose necessarily to follow from se-
 “ parating them. If, for instance, in the pre-
 “ sent

“ sent cause, the question had been put ge-
 “ nerally, and the decision had been to ex-
 “ punge Mr Dalrymple from the roll ; still,
 “ as it happened, a majority of the Court
 “ would have thought his estate was a pro-
 “ per wadset, and a majority also would have
 “ thought his seisin good : and if two differ-
 “ ent causes had come afterwards to be tri-
 “ ed, in one of which the sole question was
 “ on a wadset, like the present ; and in the
 “ other on a seisin, also like the present, the
 “ majority of the Court, in each of those cau-
 “ ses, must have decided in favour of the
 “ Defendant, though the *necessary* inference
 “ from their decision in Mr Dalrymple’s
 “ case would have been, either that his estate
 “ was not a proper wadset, or that his seisin
 “ was void.”

Mr Douglas, in a note upon the alledgeance
 that the practice in England was the other
 way, adds, 263. 264. In “ confirmation of
 “ what is here alledged, see the case of the
 “ Earl of Shrewsbury against the Earl of
 “ Rutland, on a writ of error to the Court
 “ of King’s Bench, Hill. 7. Jac. 1. (1. Bul-
 “ strode 4. to 11.) In that case, three errors
 “ were

“ were assigned; yet though, in delivering
“ their opinions, there were three out of
“ five Judges who agreed with the Court of
“ Common Pleas on each separate point, the
“ judgment was reversed. From the report
“ of the case, the propriety of separating a
“ cause, where there are different points, in-
“ to distinct questions, appears to have been
“ fully argued; and the Court held that it
“ ought not to be done.

“ To ascertain which of the methods is
“ the right one, or in what cases the one
“ should be followed, and in what cases the
“ other, seems to me a problem of very
“ great nicety, and very difficult to solve.”

I have looked into the report of Bulstrode, in Lord Shrewsbury's case, referred to by Mr Douglas; and I find, that though the grounds of error assigned were fully considered, yet there was no argument at all with regard to the motion for putting the question separately.

From Mr Douglas's statement, this seems to be the single case in which the question
was

was put generally in the King's Bench; the authority, therefore, of the English practice cannot be referred to on either side.—But this is a matter in which practice ought to have no authority or weight given to it.

The most plausible argument for putting the question separately, seems to me to be:

—The question is, Whether is there ground in law for expunging from the roll or not? That ought to be determined by the majority of opinions, and therefore the question put on each point; for if it is in general, then the minority, not the majority, of judgments or opinions prevails.

If the question in the Fifeshire case had been put in general, the five opinions for repelling both objections would have been deprived of the aid of the four who concurred with them on each separate objection; and each four would have had the aid of the other; tho' they did not concur, but differed on each objection.

The question here is not, Whether the complaint ought to be sustained or not? or, Whether the respondent ought to be expunged

ged from the roll or not? but, Whether it be just that the complaint be sustained, and how is the justice to be come at by the Court? in the same way as by each individual Judge, who, before he can determine in general, must, in his own mind, determine first on each particular objection.

If the question be put in general, it will carry, Sustain the complaint, by eight to five votes: but no ground or reason can be assigned in the judgment, because there are nine to four opinions against every ground of the complaint; so the determination is the decree, but not the judgment of the Court; yet it is the majority of judgments, or opinions, that ought to prevail. If the question be put point by point, Reason prevails, and assigns her grounds, she repels the objections, and therefore dismisses the complaint; but if the question had been put in general, and the complaint sustained, no reason could be assigned, nor could the objections be with truth repelled.

In the case under consideration, the different grounds of complaint are quite distinct, and each might be made the ground

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of a separate action or complaint ; and, if that had been done, it is plain, each complaint must have been dismissed : now, why should any advantage be gained by throwing them into one action or complaint.

It was admitted, however, in the case from Fife, by the advocates for the separate question, that no general rule could be laid down, and that it depended on the circumstances of the case, Whether separate questions, or a general one ought to be put ? and all of them whom I have heard upon the subject agree, that in cases where the grounds are not perfectly distinct, but aid one another, and in all circumstantial cases where a challenge is on the head of fraud, the question must be put in general, because in all such the circumstances aid one another. But cases of mere law, in which the points are perfectly distinct, may be figured, where the question must, notwithstanding, be put in general, *e. g.* If one claims the effects of a defunct as having right to them by the law of the place in which was his domicile ; another claims them by the law of the place in which they are situated ; and a third by
the

the law of the native country: the question must not be put separately, Shall the law of the domicil be the rule? for, if it were, it might carry that no law at all should be the rule, *e. g.* Suppose twelve ordinary Judges and the President, (who has a vote only in case of equality) present, and that four of the twelve ordinary Judges are for each of the claimants; upon separate questions, it would carry eight to four, that neither the law of the domicil, *rei sitæ*, nor native country, ought to regulate, and the cause could not be determined.

The putting separate questions in such a case, were evidently improper and absurd. The vote on each question does no more than determine an abstract negative proposition, which is insufficient for deciding the cause. The question must be, Prefer A, B, or C, or which law shall be the rule? and he who has the casting vote for him will carry it.

The vote on the separate questions in the case of the Freeholder did not determine mere negative propositions. Each question

involved two opposite propositions: there was a fair contrast in it, and a positive determination was given on the two propositions on which the rights of the parties depended.

But the great difficulty is, to assign a sufficient reason for the distinction which is admitted to be just by those who are for separate questions, and to draw the line; for if none be drawn, it makes way for discretionary power, which ought to be avoided if possible. It may be said, if a claim is founded on a proposition, as of law, which the other party disputes, every individual Judge, before he can form an opinion, must determine in his own mind previously upon every argument that has been urged, or has occurred to himself,—ought not the Court, which is a collection of Judges, to do the same?

In the same way, what facts have been proved or not, must be determined, by every individual Judge in his own mind,—ought not the Court to do the same?

If

If they do, it may happen that a point shall be determined for a party on a separate general question as to it, though on a separate particular question as to each argument, every one of them might have been voted insufficient.

And in a case of fact, a deed may be set aside on the head of fraud, tho' on a question as to each circumstance, every one of them might have been found not to be proved. It may be said, that putting the question on each point separately cannot claim, with reason, the merit it pretends to of bringing out the real justice of the case, and giving effect to the majority of opinions or judgments, for the result of them could only be known from a separate question on each argument. If a majority declares that every argument urged in support of a proposition in law is insufficient, it ought not to be held to be law; and putting a separate general question on the point, disappoints justice. In the same way, if every fact founded on, be not proved according to a majority of opinions, the putting the general question, Proved or not? or, Sustain or

or repel the reasons of reduction? is improper.

What if the arguments aid one another? then it may be thought they amount but to one argument.

In circumstantial cases, the different facts aid one another undoubtedly; and therefore after it is ascertained what are proved, a separate question ought not to be put on the relevancy of each, for they amount to one argument, that the case falls under, *e. g.* fraud, but the question ought to be general, Reduce, or Sustain the deed?

Besides, in most cases, it would be troublesome and tedious to put separate questions on each argument or circumstance; and, in many, insufferably so, and indeed inextricable, especially in questions of fact. Whether a fact be proved or not, depends on the degree of credit given to witnesses, the effect of real evidence, &c. as to which, different men will form different opinions, according to their temper and feelings; so that no fixed principle can be here resorted to,
and

and therefore they are not such proper objects for a separate question being put on the proof of each fact, as propositions in law. A court of justice ought to act as an individual as far as it can, but it can do so only to a certain extent: from which it may be inferred, that though, for various reasons, it may be expedient that a Court consist of a number, yet, in the abstract, the Court is most perfect that consists but of a single Judge. He can always assign his reasons, a numerous Court frequently cannot.

I have heard a very ingenious and humorous argument stated against putting separate questions.—Four men, (it was said,) having met to drink a bowl of punch; after the first glass, one of them objected that it was too sweet, but on a vote it carried three to one that it was not; another maintained it was too sour, but that objection was over-ruled by the same majority; the objection of a third that it was too strong, shared the same fate, as did that of the fourth, that it was too weak. Thus it carried upon separate questions that the punch was

was liable to no objection, yet none of the company would drink it; and, had the question been put in general, Is the punch good or bad? it would have been declared bad with unanimity.

But to the argument from this example, it may be answered, that the question did not depend upon judgment, but taste; and that the intention of making a bowl of punch, being to produce a liquor agreeable to every one of the company, unanimity was essential, and any question improper,

In the reclaiming petition above-mentioned, (p. 17,) it is said, "It is a jest to say that a point and an argument are different; as all points are arguments, and all arguments are points." Where a libel contains several conclusions, as one for payment of a debt, another for relief of an obligation as surety for the defender; these may be called different points. But where the libel has but one conclusion, *e. g.* the reduction of a deed, the several objections to the deed are so many grounds and reasons for setting it aside, and cannot be called points more than

than any argument that may be urged against the deed.

This passage seems to involve several mistakes. A point, as the word imports, is a precise, unconnected proposition, according to the truth or falsehood of which, judgment must be given for one or other of the parties. The conclusion of the libel is not a point, but an inference drawn from one. The libel referred to in the above passage is, in reality, two libels in one. All points are, no doubt, arguments, and decisive ones; but all arguments are not points. They are considerations, or reasons, for establishing a point, if disputed; or for shewing, if it be admitted, its applicability to the case: but they are not in many cases points, because they are not unconnected, decisive propositions; but aid one another, and, in effect, amount but to one argument. If, in a reduction of a contract on the head of fraud, *e. g.* it be proved, *1st*, That the granter had drunk freely; *2^{dly}*, That he was a man of an easy temper; *3^{dly}*, That no friend, relation, nor person of character, had been advised with, and that there was some inequality in the bargain;

gain; these circumstances are not points: for they are not decisive, unconnected propositions; but reasons or arguments for bringing the case under the point (which cannot be disputed) *viz.* that every contract may be set aside on fraud. Each of them is not sufficient of itself, but the amount of the whole is; and therefore it would be improper to put a separate question on the relevancy of each. They have no resemblance to the two points in the case of the Freeholder, as to the sufficiency of the right and validity of the seisin; for a question on each of these determined a precise, unconnected, decisive proposition.

If, in that case, the nullity of the seisin had been maintained, *1st*, Because it was not conform to its warrant; *2dly*, Because it was taken at a wrong place; and, *3dly*, Because it was not legally authenticated;—these three are precise, unconnected, and decisive propositions: they are arguments, no doubt, but they are points too; and if a separate question be at all proper, it ought to be put on each of them; for each of them, if made out, would annul the seisin.

If

If the point be not admitted, and various arguments be urged for establishing it; if they be not unconnected, but aid one another; a separate question ought not to be put on each: but if they be quite distinct and unconnected, it may be thought a separate question should be put on the sufficiency of each*.

Of

* Since writing upon this subject I have seen Condorcet's "Essai sur l'application de l'analyse à la probabilité des décisions, rendues à la pluralité des voix," published at Paris, 1785. He holds that the question must be put separately, on this principle, that a system of propositions is true, only because each of the propositions of which it is composed is a truth. Vide Disc. prelim. p. 47. And he adds afterwards, Justice requires "Que le système des propositions simples qui les forment soit rigoureusement développé, que chaque avis possible soit bien exposé, que la voix de chaque Votant soit prise sur chacune des propositions qui forment cet avis, & non sur le résultat seul. La manière de proposer la question à décider est donc très-importante; la fonction d'établir cette question est donc une des fonctions les plus délicates & les plus difficiles que le Corps, chargé de décider, ou ceux qui l'ont établi, puissent confier. Cependant chez les Anciens, & même chez les Modernes, elle a été presque par-tout abandonnée au hasard, ou donnée comme un pouvoir, un droit attaché à une dignité, & non imposée comme un devoir qui exige de la sagacité & de la justice." Ibid. p. 69. See also p. 117. quarto edit.

Of Appeals.

Nothing can be more incongruous than appeals from the Court of Session to the House of Lords. Such appeals are not supported by the articles of Union, in which there is not a word about appeals. They have taken place from a mere, and very imperfect analogy. It by no means followed, that, because an appeal was competent to the Parliament of Scotland, it was competent on the Union to the House of Lords.

—An appeal to the Parliament of Scotland was an appeal to the whole Parliament of the kingdom; an appeal to the House of Lords is an appeal only to one of the branches, or houses, of the British Parliament. An appeal to the Scots Parliament brought the case before a number of men who understood well the law of the country; an appeal to the House of Lords brings the cause before a set of men who cannot possibly understand the law of Scotland. It would have been better at the Union
this

this matter had been taken into consideration, and some other mode of review within the country adopted: for it is a palpable absurdity, to carry away questions of Scots law from a Court that does understand them, to a Court that cannot. We never hear of an appeal to the House of Peers from the King's Bench, Common Pleas, &c.; the reason is, that in England they have another kind of appeal. The Courts there, I believe, review the judgments of each other in a certain meeting and manner. If the Court of Session were divided into different Courts, and the Exchequer were to get, as it ought, a share of the business, some such method ought to be followed in this country: it is most humiliating, in my opinion, to have an appeal from our supreme Courts to one out of the country.

this matter had been taken into considera-

the country adopted; for it is a palpable ab-

Of Criminal Law.

IN the "Loisirs de Chevalier d'Eon," tom
v. there is a pretty full account of the
laws of Russia; particularly of the additional
code composed by order of Peter the Great,
and the entire new code of the late Em-
press.

The Czar discharged every Judge, under
pain of death, from interpreting the laws
and constitution. If the meaning of this
regulation be, that no man shall be pu-
nished for a crime at common law, it seems
to be wise. Some criminals may, perhaps,
escape in consequence of it; but better sub-
mit to that inconvenience, and extend the
law by statute from time to time, than make
way for arbitrary punishments.

In every country there ought to be a cri-
minal code, defining every crime, and spe-
cifying the punishment. This code ought
to be promulgated, and should be one of the
books

books which children ought to study. In this country we have no criminal law promulgated, except a part of the Jewish, called the Ten Commandments, which are generally exhibited upon two tablets in churches. As to civil matters, I observe that the Commissioners of the Revenue do give notice, by advertisements in the Newspapers, of such statutes as pass with regard to it. This they do *ex proprio motu*, for these statutes do not require it. No notice whatever is given of any other statutes. The principle upon which the promulgation of laws has ceased is, according to Erskine in his Institute, that every man is, *fictione juris*, supposed to be present in Parliament when they pass.

This is most absurd, especially considering the state of our representation; but whatever that may become, promulgation of the laws ought to take place; the observance of which is essential to society; these ought to be constantly kept in the view, or frequently brought to the remembrance of the people. In a late charge to the Grand Jury, who found a bill against Downie and Watt,

Watt, it is observed, "That we knew but little of the treason laws, of which we had no experience for a very long time." The observation is just; but if the Judges, selected from the supreme Courts of this country, who composed that tribunal, knew but little of these laws, how should the poor prisoners have known any thing at all of them? The observation evinces, that as soon as there was the appearance of commotion among the people, the treason laws ought to have been carefully promulgated. The same inference is to be drawn from an observation made by a learned Judge at the circuit subsequent to these trials: "He was afraid (he said) the people of this country supposed that they might meet to concert and conspire against Government, and were not liable to punishment if execution did not follow."

There can be little doubt that the people did, and must have supposed so; because common sense, as well as common law, teaches, that no man ought to suffer for mere intention, "*cogitationis pœnam in foro nemo patitur*; and therefore justice, as well as expediency,

diency, required that they should have had warning of the statutory exception.

As to civil matters, the common law must be allowed to remain: not that it is highly proper to have a civil code too, but because the nature and number of civil cases is such, that a multitude of them must occur which cannot be determined by resorting to a civil code, however accurate it may be. That is not the case as to crimes. It is possible, now a-days, to foresee all the crimes that can be committed with much prejudice to society: and though it should happen that criminal ingenuity should hit upon an offence not foreseen, and escape, from the common law being superseded, the inconvenience is not to be put in the balance with that arising from the power of arbitrary determination and punishment.

Soon after the sentence of the commission, adjudging Watt and Downie to be hanged, after having their hearts taken out, &c. I read in a news-paper, that, in America, the punishment of death had been abolished, except for what they call murder in the first degree.

degree. The Empress of Russia had, many years ago, abolished the pain of death, except for murder and duelling. With regard to the last, it is the aggressor only who is to suffer: by which expression, ought to be, and probably is meant, the person who unreasonably provoked the contest. The abolition of capital punishment had also taken place long ago in Tuscany; and, according to all accounts, in none of these countries have crimes become more frequent. The temper, manners, and circumstances of the people, must be considered in regulating this matter.

Sooner than the sentence of the commission, and having their hearts taken out, &c. I read in a new paper, that in America, the punishment of death had been abolished except for what they call murder in the first degree.

Of Jury Trial.

SOME have thought, that the admiration of the mode of trial by a Jury of the vicinage, is a vulgar error. The object of the law (they say) in all trials is, or ought to be, to get a set of Judges as impartial and intelligent as possible. To acquire a thorough knowledge of the rules of justice and evidence, which are, and must be, complicated in every great commercial country; to be able to detect the fallacy of ingenious pleadings, and gather the truth from contradictory testimonies, requires a liberal education, deep study, and long experience. It is plain, therefore, that an *occasional* Jury cannot be so intelligent as Judges. A standing, or select Jury, is a very different thing; it comes very near to a set of Judges.

As to impartiality, it is manifest that a Jury of the vicinage must be the most partial tribunal that can be composed. The law of

England, sensible of this, has introduced a variety of checks and precautions, which, however, some late trials have proved not to be sufficient; particularly those of the Birmingham rioters, who burnt the houses of Dr Priestly and some others. There are no such checks in Scotland; but the public prosecutor in that country, aware of the danger, has frequently brought criminals from different counties to be tried at Edinburgh, in order to avoid local passions and prejudices. This, however, is but an imperfect remedy; for there are passions and prejudices which are universal; such as those arising from politics, religion, and even property. Would it be just to try a man, accused of being a poacher, by a Jury of landed gentlemen associated and zealous to support the game laws? It has often happened, both in political and judicial arrangements, that no attention has been paid to certain steps of procedure, on account of their obscurity and seeming insignificance; though, in reality, they were of the utmost consequence. The power of summoning the Jurors is an instance: if it be abused, all the subsequent and derivative procedure must be unsafe.

It

It appears from Blackstone, that great pains have been taken in England as to that matter; but, after all, there seems to be reason to think that enough has not yet been done. We often find it asserted, in speeches and pamphlets, that the Jury was packed. Now, since the English have a *vox signata*, a particular expression for that manoeuvre, it is plain that it is not impossible, nor indeed uncommon. It will probably be found that the error is in the first step. The Jury ought not to be summoned by the Sheriff, or by the Court, or clerk of Court.

Since an occasional Jury cannot be as intelligent and impartial as Judges, it should seem that Jury trial has been adopted, not because it was thought good in itself, but because it was thought better than trial by Judges; of whom a jealousy has been entertained, chiefly on account of their being appointed by the Crown.

If this be the principle, it follows, that the power of summoning a Jury ought to be vested, so as to exclude all possibility of influence from that quarter. The Jurors ought
to

to come on by some other method which would have that effect.

The allowing challenges to be made, without cause, to a great number of the Jurors, shews a very good disposition in the law of England, but it is insufficient. The special Jury seems to be the fairest, and indeed 'as fair as possible. Why is it not the mode of trial in criminal cases, as well as civil? or, Why not adopt the principle of the mode of trying a contested election in the House of Commons? It is curious enough, that a man is certain of a fair trial as to the merits of a controverted election, but must be exposed to a packed Jury when arraigned for his life.

There is no check, or regulation, as to this first step in Scotland. Another defect there is, that, in practice, challenges without cause are not known. As there is no law prohibiting them, it should seem that the criminal Court itself may remedy this: for, as the object of the law and of the Court is, or ought to be, to give a prisoner as fair a trial as possible; every measure that is necessary,
or

or proper, for that purpose, ought to be adopted.

It is not easy to conceive on what principle of justice or reason the prosecutor, or the Court, can object to challenges without cause, if a number sufficient to try be left: but if there be any disinclination to this in the Court, a statute ought to pass putting this matter on the same footing as in England. I gave my opinion to this purpose twenty years ago. See *Criminal Cases* published in 1774, p. 528. 771.

The next greatest defect in our practice is the power which the criminal Judge, or the President of the criminal Court (if it consist of a number) has, of selecting the fifteen Jurors who are to try the prisoner. This power thwarts and counteracts the very object of law in establishing trial by Jury, which is to controul, check, and diminish the influence of the Court. It would be most reasonable to give the prisoner the choice of the fifteen; or if that will not be granted, they ought to be taken by lot: one or other of these modes is that which has been adopted

ed by the wisest nations and legislatures, ancient and modern.

Montesquieu says, “ Les connoissances, que l’on a acquises dans quelques païs, et que l’on acquerra dans d’autres, sur les regles les plus sures que l’on puisse tenir dans les jugemens criminels, intéressent le genre-humain plus qu’aucune chose qu’il y ait au monde*.” *i. e.* “ The knowledge which some countries have acquired, and others will in time acquire, as to the safest rules to be observed in criminal procedure, interests the human race more than any thing in the world.” If so, it is astonishing that Jury trial should be allowed to remain on the footing on which it is in Scotland. The same author seems to think, that the number of challenges allowed in England gives nearly the same security as the Roman method: but that I doubt very much; for the Roman method † was sometimes by lot, sometimes choice of parties, sometimes a mix-

* De l'Esprit des Loix. Liv. 12. ch. 2.

† See Adams's Roman Antiquities.

mixture of both*. This excluded the possibility of packing; but in England we often hear it alledged, that the jury were packed: now, what signifies jury trial, if there be a possibility of packing?

I am apt to think that this mode of trial owes much of its reputation to verdicts given against the crown in times of political controversy, which were sometimes far from being just. It is, however, I admit, the best mode in such times; but in ordinary

* If the criminal law of the Romans be ours, as was maintained in the trial of Mr Muir for sedition before the Court of Justiciary, challenges without cause ought to be allowed, as they were by that law, both during the republic and under the emperors. This I learned from Voltaire, who, in his Lettre du Pere Polycarpe, says, "On nous dit que dans la patrie de Cicéron, où le pouvoir de juger n'était attaché, ni à un certain état, ni à une certaine profession, il était permis à tout plaideur de récuser le juge qu'il croyait suspect, sans être même obligé de prouver la suspicion. *Sors et urna dant judices, licet exclamare: hunc nolo.* Cette liberté de récuser ses juges subsista encore sous les empereurs, comme je l'ai remarqué dans une loi du Code, rapportée dans un ancien *factum* qui m'est tombé par hasard sous la main." "*Licet enim imperiali numine judex delegatus est, tamen quia sine suspitione omnes lites procedere nobis cordi est, liceat ei qui suspectum judicem putat, eum recusare.*" Loi xvi. au cod. tit. *De judiciis.*

nary cases, I apprehend it is not. I do not recollect to have seen, in the course of my own practice for thirty-two years, one ordinary case; nor did I ever meet with a lawyer who could tell me, that in the course of his practice he had seen one such case, in which the Jury had differed from the Court, and were in the right: but I have several times seen, men guilty of murder, forgery, fire-raising, and other atrocious crimes, escape, by the erroneous judgement, or blundered verdict, of the Jury. The mischief arising from this last might easily be remedied, by allowing the Court to send back the Jury, to correct and amend their verdict, when there is any mistake in point of form, or otherwise, which makes the verdict, as written out, contrary to their meaning.

It has been much disputed, whether the Jury ought to be judges of the law as well as of the fact *. It is very clear to me, that they

* See the Author's introduction to his Criminal Cases, p. 18.

they ought to be judges of the law; because no man ought to be condemned to punishment, unless the crime be so palpable as to be perceptible to the most illiterate. There is more reason for contesting their right to be judges of the fact; because to discover the fact, or truth, in the confusion and obscurity created by contradictory testimonies, and eloquent pleadings, requires a degree of experience, knowledge, and ability, not to be expected in ordinary jurors. It may be said that this is supplied by the charge of the Judge. It is so, generally; but then this gives too much power to the Judge, especially if he be entitled to select the petit jury.

It has been proposed by some of late to introduce jury trial in civil actions, excepting those concerning land rights, after the example of England, it is said; but the proposers have not, I imagine, adverted to this, that jury trial is not known in the Court of Chancery in England, where the greatest part of litigated property in that country depends, and must do so, as it judges of trusts, wills, marriage-settlements, &c.

If (as some have likewise proposed of late) the Court of Exchequer, which has now very little to do, were to get a share of the business of the Court of Session, which has a great deal too much to do, it would be very right to appropriate to that court, which has already a Jury by its constitution, a number of causes generally admitted to be more proper for the determination of jurymen than judges; such as actions of damages, mercantile questions, disputes about coal-workings, and the like, for the determination of which a particular skill is requisite: or such questions might be tried at the circuits, where a Jury attends, and where there is generally little criminal business; but I doubt much whether this mode of trial could be incorporated with the procedure of the Court of Session.

As to the Sheriff, and other inferior courts, it was not meant, I understood, that it should take place before them; nor was it explained, whether, supposing it to take place before the superior courts, an appeal or motion for a new trial would be competent? a very material question. Any such

such alteration would require a number of regulations, complicated, and, I suspect, very difficult of execution.

I have read a great part of a book entitled "*Science de Legislation*," a translation from the Italian: who the author is we are not told; but that he is a man of worth and genius is proved by this work. I was surprized, however, to find, that, in his new system of criminal law, he requires a jury of the vicinage and unanimous verdicts as in England; in which two particulars the system of that country appears to me very exceptionable.

The passages in this book which most deserve attention, are those that treat of *this country and its constitution* *. This author is against enriching the Capital of a country by establishing all the supreme courts there; and for having one in each county, with an appeal in a certain form, but within

* See vol. I. p. 69. 70. 142. to 177. inclusive; and vol. II. p. 250; and vol. VI. p. 41.

in the county. See vol. II. p. 178. This idea, if ever an alteration shall take place in the law of this country, ought to be well weighed.

I remember to have read, many years ago, in a book entituled "*Ami des hommes*," "Better have injustice at hand than justice at a distance." The truth of this maxim may well be doubted of; but there can be no doubt that it is of infinite consequence to have justice administered at no great distance.

Of Capital Punishment.

THOUGH I have read much of late on the other side of the question, I still think that the punishment of death ought to be inflicted for murder, real proper murder; and that not only on account of the example, and to rid the earth of a person who has manifested such cruel dispositions, but in justice to the deceased.

This last consideration is stated by Aulus Gellius; but the author of the *Mercure de France*, no. 24. 1790. (where this question is very well argued) says that it is "*peu digne de la loi*," unworthy of the legislature. I do not see why. I see no reason why justice should be refused to a man because he is dead.

As to other crimes, lesser punishments may perhaps suffice, such as banishment,
hard

hard and public labour, &c. The temper, manners, and circumstances of the people, must be considered in regulating this matter.

I doubt much whether such mitigation, as to high-way robberies, and other crimes, be admissible in this country. To say the punishment is excessive, because the life of a man is infinitely more valuable than a watch, or purse of money, is nothing to the purpose. The life of the man is taken away, not for the watch, or the purse, but for public security, and that may be put in the balance against many lives.

It is said, that in Tuscany and Russia where the mitigation has been introduced, crimes are not more frequent *. That may be

* Pastoret, in his *Treatise des Loix penales*, i. 56. 57. says of the former country, "Qu'est il resulté parmi eux de l'abolition de la peine de mort? Beaucoup moins de coupables. Des registres exactes le prouvent. L'adoucissement des loix avoit meme deja produit cet effet. En 1779 en comparant les dix dernieres années avec les dix années qui les precederent ou trouva fort diminué le nombre des criminels." As to Russia,

be a reason for trying it here, but it seems to me a dangerous experiment in a rich and luxurious country*.

Russia, he says, *ibid*, "that the Empress inflicts the pain of death only for high treason."

In Pennsylvania, too, capital punishment has been abolished, except for murder in the first degree, as they express it. All other crimes are to be punished with imprisonment for a greater or lesser number of years.

* Many of the members of the French Convention who voted for the death of Louis XVI, declaim against capital punishment, and declare that this is the last case in which they will agree to it.

Of the Punishment of Transportation.

PHILIPS, in the account of his voyage to Botany Bay, (p. 6.) says, "By the contest in America, and the subsequent separation of the thirteen colonies, this traffic (of convicts) was of course destroyed: other expedients, well known to the public, have since been tried, some of which proved highly objectionable." In a note, he adds, "particularly the transportation of criminals to the coast of Africa, where, what was meant *as an alleviation* of punishment, too frequently ended in *death*."

He also sets forth, that acts and Regulations were drawn up in consequence of an order of Privy Council, and that a Statute pass'd in 1787 erecting a court of judicature there.

This last Statute does not contain, refer to, or at all mention regulations of any kind; it does no more than erect a court.

In

In p. 73, he inserts certain regulations, or orders, by the Governor of Botany Bay; but does not say, that these were drawn up by any order of the Privy Council. These regulations, or orders, *inter alia*, bear, “ the
“ convicts being the *Servants of the Crown*
“ till the time for which they are sentenced
“ be expired, *their labour is to be for the pub-*
“ *lic*; and you are to take particular no-
“ tice of their general good behaviour, that
“ they may hereafter be employed, or re-
“ warded, according to their different me-
“ rits.” No other regulations respecting
this matter are to be found any where.

The statute of the 25th of his present Ma-
jesty, entituled, “ An act for the more effec-
“ tual transportation of felons, and other
“ offenders, in that part of Great Britain
“ called Scotland,” Cap. 46. Sec. 1st, en-
acts, “ that from and after the first day of
“ July 1785, when any person shall be law-
“ fully convicted before any court com-
“ petent for the trial of crimes in Scotland,
“ of any offence, *for which the punishment of*
“ *transportation, or banishment beyond seas, may*
“ *be inflicted*, it shall and may be lawful for
the

60 *Of the Punishment of Transportation.*

“ the said court, to order and adjudge, that
 “ such person or persons, so convicted as
 “ aforesaid, shall be transported beyond the
 “ seas in like manner as now is in use;
 “ and in every such case, it shall, and may
 “ be lawful for his Majesty, by and with
 “ the advice of his Privy Council, to declare
 “ and appoint to what place or places, part
 “ or parts, beyond the seas, either within
 “ his Majesty’s dominions, or elsewhere out
 “ of his Majesty’s dominions, such offender
 “ shall be conveyed, or transported: *and such*
 “ *Court is hereby authorised and impowered to*
 “ *adjudge the services of such offenders, and to*
 “ *order them to be transferred to the use of any*
 “ *person, or persons, and his and their assigns*
 “ *who shall contract for the due performance of*
 “ *such transportation.* And when his Majesty,
 “ his heirs and successors, shall be pleased
 “ to extend mercy to any offender, or offenders,
 “ who hath, or have been, or shall be, under
 “ sentence of death, in that part of Great Bri-
 “ tain called Scotland, on condition of transport-
 “ ation to any place or places, part or parts,
 “ beyond seas, either for the term of life,
 “ or any number of years, and such in-
 “ tention of mercy shall be signified by
 “ one

“one of his Majesty’s principal Secreta-
“ries of State, it shall be lawful for any
“court having proper authority, to allow
“such offender, or offenders, the bene-
“fit of conditional pardon, and (except in
“cases where such offender, or offenders,
“shall be authorised by his Majesty to trans-
“port himself, herself, or themselves,) to
“order the transfer of such offender, or of-
“fenders, to any person or persons, who
“shall contract for the due performance of
“such transportation, and his or their as-
“signs, for such ; and the same term of years
“for which any such offender or offenders,
“shall have been ordered to be transported,
“or for such term of life or years, as shall
“be specified in such condition of transport-
“ation as aforesaid, shall have a property
“in the services of such offender, or offen-
“ders, for such terms respectively.”

The sentences of transportation which have been pronounced since this act, both here and in England, are much in the same terms.

The sentence of the Court of Justiciary
against

62 *Of the Punishment of Transportation.*

against Mr Muir bears*, “ In respect of the
 “ said verdict, in *terms* of an act passed in
 “ the twenty-fifth year of his present Ma-
 “ jesty, intituled, An act, &c. ordain and
 “ adjudge that the said Thomas Muir be
 “ transported beyond seas to such place as
 “ his Majesty, with the advice of his Privy
 “ Council, shall declare and appoint: and
 “ that for the space of *fourteen* years from
 “ this date; with certification to him, if,
 “ after being so transported, he shall return
 “ to, and be found at large, within any part
 “ of Great Britain, during the said fourteen
 “ years, without some lawful cause, and be
 “ thereby lawfully convicted, he shall suffer
 “ death, as in cases of felony, without be-
 “ nefit of clergy, by the law of England,” &c.

It was not meant by the Court of Justi-
 ciary to adjudge Mr Muir’s services; nor
 did they suppose that such would be the ef-
 fect of the sentence; they understood that
 the effect of it would only be to set down
 Mr Muir at Botany Bay, or at what place
 the

* See Robertson’s edit. of Muir’s Trial, Edin. 1793. p. 139.

the King should appoint; but that after he was there, he could not be obliged to work, nor be detained; but that he might leave it when he could, and go to any part of the world, Great Britain excepted.

The then Dean of the Faculty of Advocates informed me, that in pleading on the relevancy for Mr Sinclair (whose trial went no farther) he argued, that the act 1703 made the punishment, fine, imprisonment, or banishment; and that as transportation for a term of years included imprisonment, the act could not comprehend it under banishment: upon which the head of the Court admitted, that the argument would be conclusive, if the person transported were obliged to remain in the place whither he was sent; but that he denied to be the case, and maintained he might leave it when he could.

That this was the understanding of the Court appears also from the pleading on the relevancy in Mr Gerald's case: one of the counsel for the Crown expresses himself thus:

(Trial p. 74.) " My brother has told your

" Lordships, upon the authority of Sir Geo.

" Mac-

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“ Mackenzie, that banishment, by transportation, was illegal; because it is impossible to confine a man to any place to which he is banished, as if your Lordships had a jurisdiction over him while he is in that place undergoing the sentence of banishment: but that is not the case; for, from the moment that he has once landed, your Lordships have no further authority; you are not confining him there; he may go where he likes, provided he does not return to this country.”

He never would have thus laid down the law in the face of the Court, had he not known that they so understood it; if he had, he surely would have been interrupted. I know that this was the understanding of the Court, not from the information of others, but from a conversation I had with one of the Judges on this important subject*.

* He informed me at the same time, they thought his crime so great, that they might have adjudged his service,

It appears to me that this sentence goes beyond the intention of the Court.

The first enactment of the statute, that it shall be lawful for the Court to transport as it formerly had been in use to do, is merely declaratory, and introductory to the following enactment, which was the real object and the *terms* of the act, viz. To give certain powers to the King, with regard to persons convicted of crimes, for which transportation, with the adjudication of service, was deemed a proper punishment.

The intention and meaning of the Court being as above stated, the sentence seems to be erroneous, not being in terms of the statute; it is not in terms of the first enactment. No sentence indeed could be, properly speaking, in *terms* of that clause, for it has no *terms*. It merely declares, that the Court
I may

vice, without being over severe; but it was not their intention. Whether a difference of rank ought to make a difference of punishment is a question I mean not at present to discuss. I only observe, that if they had, it would have been the first example of their having adjudged the service of a gentleman, and a most democratic determination.

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may transport as they had done before. No powers are given to the King by that clause; so that if the meaning was merely to give Mr Muir a set-down at a particular place, without adjudging his service, it cannot be supported by this clause, for it gives no such power, nor any power the Court had not before: such sentence therefore can be supported only by the former law, or practice, and there was none that could support it. As to the subsequent enactment, the sentence cannot be supported by it, because the service was not adjudged, nor understood to be adjudged; yet such adjudication is, by the express words of the statute, a pre-requisite, before the *terms* of the statute, that is the powers of the King, can operate. But farther, if such was the meaning, the error of the sentence is manifest, from the adjection of a term of years; for, to transport a man to a place for fourteen years, and at the sametime understand and declare that he may leave it when he can, is incongruous and inconsistent.

The sentence, according to the plain sense of the words, resolves into what is called
deportatio

deportatio in the Roman law, or banishment to a particular place, for a certain time; which place the person sent thither cannot leave, as the adjection of the term is an order to remain, and a warrant for detaining there, as far as such sentence can grant such warrant. If it was meant that he should be at liberty to quit the place when he could, why adject a term?

If it shall be said, *qui potest majus, potest minus*, that if the Court could have pronounced a severer, they might a lesser punishment; if they could have transported him to any place the King should appoint, with an adjudication of his service, *a fortiore*, they could transport him to any place the King should appoint without such adjudication.

I answer, this will not remove the error; because, 1st, The sentence bears to be in terms of the act of the 25th of the King, and that statute gives no such power: therefore, as the terms of the statute have not been observed, the sentence is erroneous, as it refers to the statute; and to it alone, and not to the former law or practice, which indeed it could

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not do, there being no previous law, or practice, authorising the Court to transport whether the King should appoint.

2dly, The argument proceeds on a false assumption, that the power exerted is less, and the punishment milder. This may or may not be the case, according to circumstances.

When a man was transported to North America, and his service adjudged for a term of years, his fate was defined ; he knew what he was to suffer, and how he was to be maintained. If his service was not adjudged, the punishment was not very severe, as the climate was not dangerous, nor even unhealthy, and the situation of the country such, as that he needed not want work if willing to take it.

But when it is allowed to transport a man to *any* place on the globe ; it is plain that a much severer, and, indeed, a capital punishment may be inflicted, under the appearance of an arbitrary one. If the climate be very unhealthy, he runs great risk of being killed by it, as was the fate of many transported

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ed to Africa. But suppose the climate not dangerous; suppose Mr Muir to be set down at Botany Bay, and that the Governor will have nothing to do with him, because his service is not adjudged, nor any power given over him; what is to become of him? he may work for his bread: What if he cannot get work? What if (as is most probable) by the time he get there he be unable to work?---he must die.

It is understood (I have been well informed) in England, that such a sentence *implies* an adjudication of the service, and it is not expressed in sentences of transportation pronounced there. It must be so understood, if implication be admissible in such a matter; which may well be doubted, as the statute makes adjudication of the service a pre-requisite. I have heard much of English accuracy in judicial proceedings, but these sentences are, I apprehend, no proof of it.

If the English idea be right, the Scotch one is wrong; and this last is clearly wrong, in as far as it supposes that the person transported may leave the place when he can; for the tran-

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transporting him for a term of years, is an order upon him to remain: if this be the case, he may be detained so long; from which it follows, that the argument from the act 1703 is invincible.

The English idea is, that such sentence virtually adjudges the service. Certain it is, from the regulations above transcribed, that it will have that effect; and consequently that the sentence, in the case of Mr Muir, goes beyond the meaning of the Court, and therefore is erroneous.

This point, though of great consequence to the unfortunate Gentlemen who were sentenced, does not seem to have been sufficiently canvassed, or considered, by any person concerned at the time of their receiving sentence. Nor was it so at passing the statute in 1787. Regulations ought to have been deliberately framed, and then submitted to the Legislature, which ought to have sanctioned them.

This punishment of transportation has been too hastily adopted, and too frequently

ly

ly inflicted, especially considering, that now Botany Bay and Africa are the only places to which convicts can be sent. A long confinement in prison, or in hulks; a long confinement on shipboard, must be a severe punishment to all; even a voyage of 1500 leagues must be a severe punishment to most men; but transportation, to a climate very distant and different from the native one, must frequently occasion the death of the unhappy prisoner soon after his arrival at the destined place; for his constitution must be very much hurt and debilitated by his previous sufferings. In short, transportation always may, and frequently must resolve into death, preceded by a tedious torture; on that account, it ought never to be inflicted for a crime which the law has declared shall not be punished with death.

If a man has been condemned to death for theft, or some other crime (for which that he should suffer there is a reluctance,) he may very properly be pardoned, on condition that he agree to be transported to Botany Bay; because, though death may be the consequence, yet, as that is not certain,
the

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the offer is favourable: or, if the Legislature, sensible that the over-severity of the law has made the punishment of a crime capital, when it ought only to have been arbitrary, it may very properly change the punishment of certain death, into one which gives a chance of life; but it is plain, that transportation ought never to be inflicted but by way of mitigation.

ON THE

Origin and Progress of Literary Property.

THAT learning and learned men should be encouraged, not checked, and that the knowledge which books impart should be diffused, not confined, are propositions which, in this age, and in this country, will not be controverted.

Several acute and ingenious essays have been published on the subject of Literary Property ; but every one who reads them must observe, that, however much booksellers may pretend, all authors are interested in the quarrel ; these pamphlets are not the spontaneous productions of authors, zealous to assert their injured rights, but the laboured efforts of gentlemen learned in the law, employed or importuned to compose them ; nor will this appear at all surprising to those who reflect on the trifling copy-money paid to the authors of “ Paradise Lost,” and the

"Justice of Peace;" by which two books, thousands and ten thousands of pounds have been gained to the trade; and it is too true, that, invariably, tho' not always perhaps in the same proportion, the profits of the author are but a mite, when compared with those of the bookseller. No wonder then that authors should

"Think what penurious masters they have serv'd,
"Tasso run mad, and noble Spencer starv'd:"

and for that reason behold the battles of booksellers with a frigid indifference, since, whatever way the disputes may terminate, they are, to authors, *bella nullos habitura triumphos*.

It is the intention of this paper to state some facts and observations, relative to this controversy, not hitherto taken notice of; which, it is hoped, may have some tendency to throw additional light on the question, and assist those who are desirous to try it by the dictates of common sense, and the rules of public utility.

Before the art of Printing was invented,
and

and while copies of books could only be obtained by the tedious method of transcribing, it is evident that authors could reap but little pecuniary advantage from the sale of their performances, to compose which, the love of fame or of mankind (noble inducements!) were, for the most part, their only motives. Though we are now a-days told, that, were it not for the interposition of booksellers, the public would be deprived of most works of merit, and of all that are attended with labour, difficulty, and expence; yet every person, not a stranger to classical learning, can attest, that, while copy-money was almost unknown, the most admirable works of genius, judgment, and application, were produced; and those who are conversant with modern writings must be sensible, that though copy-money has multiplied books, yet it has rendered them generally worse; has bribed men to prostitute their talents, subjected wit and abilities to drudgery and dependence, and consequently degraded, rather than advanced, the character of author.

But though there is no doubt that the

earliest and best works of antiquity were written and communicated to the world from no prospect of gain, yet we may gather from several passages in Latin authors, that sales of literary copies, for the purposes of recital or multiplication, were not unknown to the Romans*; and yet it is certain, that their lawyers, accurate and subtle as they were, never entertained an idea, that authors, after publication, could prohibit others from transcribing their compositions: a discovery reserved, it seems, to illustrate the annals of modern jurisprudence.

The first inventors of printing were very desirous to monopolize it, and therefore did their utmost to conceal it†, not being metaphy-

* See Blackstone's Comm. on the Laws of England, Vol. II. p. 406. *in fine*. 4to. Oxford, 1766.

† “Inventores primos id clam habuisse, omnesque secreti conscios, religione etiam jurisjurandi interposita, excusasse, ideoque vastæ molis opera per paucis operariis fuisse concredita.” *Maittaire Annal. Typogr.* I. p. 4. and in p. 10. he cites a passage from an author, who explains the particulars of the discovery. “Cum igitur Gu-tembergius ad sumptus refundendos damnatus fuisset, et

taphysicians enough to imagine, that by inventing they had acquired an exclusive right to exercise that art; but, in spite of their endeavours, it soon spread; printers multiplied, and interfered with one another, as all persons must do, more or less, who are concerned in the same trade.

To prevent this inconvenience, some of the early printers applied to the Pope, the Republic of Venice, and to the Duke of Florence, to get the sole privilege of printing the books of which they were the first publishers; and this they obtained for a term of years, seldom exceeding fourteen, and often not so long, as appears from the first editions of the classics, to which patents are commonly prefixed, excepting Cicero's Offices, and some others, printed before such privileges were thought of.

Hence

“ ex eo similitates inter illum et Faustum magis exarsissent,
“ ille autem interea artem vidisset et didicisset, siquidem
“ inter tot operas, quæ ad illam excudendam requiruntur
“ fieri non potuit ut ea diutius occultaretur, quod etiam
“ Deus procul dobio noluit, Moguntia Argentinam se contu-
“ lit,” etc.

Hence it is clear, that literary property was, originally, a privilege granted, not to authors, to prompt them to write, but to printers, to induce them to print editions of works that then lay in manuscript.

But the transition, from the encouragement of printers to that of authors, was obvious; and accordingly, soon after, privileges appear in favour of the author, which are by him commonly assigned to the bookseller, whose name is marked on the title-page; and, as the privilege is always limited to a certain period, the author never pretends to convey more.

Many of these privileges are granted under certain conditions; such as, that copies shall be given to so many libraries; that the price shall not exceed a certain rate, and that the work shall be executed on the same paper, and with the same types, of which a specimen had been exhibited before the privilege was conferred. The two first of these conditions were adopted by our statute 8^{vo} *Anna*; but the proviso, for regulating the prices, was afterwards repealed as impracticable:

cable : so that, in this country, we have no check against the extortion of literary monopolists.

As absolute power prevailed in the countries where those privileges were first desired, they would, doubtless, be granted without any demur about their legality, as they gave the prince a handle for superintending and controlling the press, which must have been perceived by him, or his ministers, to be of very great consequence to government.

That power was early claimed as a part of the royal prerogative in this island, where the lawyers held, that printing was *inter regalia*; and, in Scotland, an act was past in Queen Mary's time, discharging any book to be printed without a licence, under the pains of confiscation of moveables, and perpetual banishment : and in the reign of Charles II. a law was enacted much to the same purpose in England*; and privileges
to

* Sir George Mackenzie, who was Lord Advocate for Scotland, in his Observations upon the act just now mentioned,

to printers and authors were readily granted in both kingdoms, all on a narrative of the humble supplication of the printer or author, and of the favour and indulgence of the prince*.

Upon this footing stood these privileges all over Europe, it never having been once thought, that they were granted *ex justitia* in virtue of a *perfect* right, but indulged from

tioned (act 27th Par. 5th Queen Mary) expresses himself thus:—"Printing is *inter regalia*, and so the king may discharge any man to print without his licence. *Vide* " *Fritch. de Typographiæ Abusu*, where he makes the regulation of the press to depend upon every magistrate, by " the law of nations; and printing may do as much hurt " to the Government as arms; and so the magistrate should " have the command of the one as well as of the other; " though I know it is most unjustly pretended by some " republicans, that, printing being a trade, no man can " be debarred from the free use of it, except by Parliament, in which their own consent is implied. We see " also, that the king allows his own printer only to print " bibles and other school-books, etc. *Vide* act 25. Par. " XI. James VI. against the sellers of erroneous books." The same doctrine was maintained in England.

* See Ames's *Typogr. Antiq.* from p. 484. *passim*.

from favour, and a view to public expediency, in the same way as they had long before been given to the contrivers of useful machines, and others

“*Inventas, aut qui vitam excoluere, per artes.*”

On the contrary, the strict legality of them was called in question, and only supported by arguments drawn from public utility; and it was admitted they ought to be recalled whenever productive of any inconvenience; and instances are not wanting of that having been done, as appears from several treatises of that period*.

In

* See Fritschius *de Abusibus Typographiæ tollendis*, §. 2. par. 4. and also his Treatise *de originali ac naturali libertate commerciorum necessaria et legibus munienda*, Cap. 10. which is intitled, *Quæ et quatenus Monopolia sunt licita*, towards the end. That such grants were considered in England as monopolies, appears from the statute against monopolies, 21 Jac. I. cap. 3. sect. 8. which provides, that the act shall not extend to any patents of privilege concerning printing or the making of ordnance, &c. By 1mo Rich. III. c. 9. (which restrains aliens from using any handicrafts, except as servants to natives, it is provided that they may import printed or written books, to sell at their pleasure. This was repealed by 25to Henry VIII. c. 15. upon a narra-

In Britain, literary property was taken under the consideration of the Legislature, and an act was passed to regulate it, which comes next to be considered; and for that purpose it will not be improper, that the procedure in Parliament, previous to the enactment, be laid before the reader, as recorded in the Journals of the House of Commons.

12th December 1709, " A petition of
 " Henry Mortlock, &c. on behalf of them-
 " selves, and other booksellers and printers
 " about the city of London, and else-
 " where, was presented to the House and
 " read; setting forth, That it has been the
 " *constant usage* for the writers of books
 " to sell their copies to bookfellers, or print-
 " ers, to the end they might hold those co-
 " pies *as their property*, and enjoy the profit
 " of

tive, that it had been enacted, because there were few printers in the realm at the time, but that now there were many cunning and expert in that science or craft, as also many that lived by the craft and mystery of bookbinding.— This act likewise provides, that the prices of books excessively rated, shall be qualified by the Lord Chancellor and others.

“ of making and vending impreffions of
“ them: yet divers persons have, of late,
“ invaded the properties of others, by re-
“ printing feveral books without their con-
“ sent, and to the great injury of the pro-
“ prietors, even to their utter ruin, and the
“ discouragement of all writers in any use-
“ ful part of learning; and praying, That
“ leave may be given to bring in a Bill, for
“ fecuring to them the property of books
“ bought and obtained by them.

“ Ordered, That leave be given to bring
“ in a Bill according to the prayer of the
“ faid petition; and that Mr Wortley, Mr
“ Compton, and Mr Pyton, do prepare and
“ bring in the Bill.”

Here it is to be observed, that the narra-
tive of this petition differs from the sub-
sumption; and that the first is juſtly and
accurately expreſſed, the other not ſo. The
narrative does not alledge, that, at common
law, the authors, or bookſellers, who pur-
chaſed from them, had any right of proper-
ty; but only ſets forth, that there had been
a conſtant uſage of ſelling books, to be held

as a property; which is a plain acknowledgment by the petitioners themselves, that there was here no real right of property, but only something which they had been pleased to view as a sort of property, or compare to a real property. But the subsumption immediately infers from this, that they actually had a real property, intitled to the protection and aid of the law, which, however artful, is plainly inconsistent and inconclusive.

11th January 1709. " Mr Wortley, according to order, presented to the House, " a Bill for the Encouragement of Learning, " and for *securing the property of copies of* " *books to the rightful owners thereof*; and the " same was received, and read the first time.

" Resolved, That the Bill be read a second time."

14th January 1709. " Ordered, That the " Bill for Encouragement of Learning, " and for securing the property of the copies of books to the rightful owners thereof, be read a second time upon Thursday " morning next."

Fur-

Further consideration of this bill lay over till the 2d of February 1709 ; when

“ A petition of the poor distressed Print-
“ ers and Bookbinders, in behalf of them-
“ selves, and the rest of the same trades, in
“ and about the cities of London and West-
“ minster, was presented to the House and
“ read ; setting forth, That the petitioners
“ having served seven years apprenticeship,
“ hoped to have gotten a comfortable live-
“ lihood by their trades, who are in number
“ at least 5000 ; but, by the liberty lately
“ taken of some few persons printing books
“ to which they have no right to the co-
“ pies, is such a discouragement to the book-
“ selling trade, that no person can proceed
“ to print any book without considerable
“ loss, and consequently the petitioners can-
“ not be employed ; by which means the pe-
“ titioners are reduced to very great poverty
“ and want ; and praying, That their de-
“ plorable case may be effectually redressed,
“ in such manner as to the House shall seem
“ meet.

“ Ordered, That the petition do ly upon
“ the

“ the table until the Bill for Encouragement
 “ of Learning, and for securing the proper-
 “ ty of copies of books to the rightful own-
 “ ers thereof, shall be read a second time.

“ Ordered, That the Bill be read a second
 “ time, upon Saturday morning next.”

Here the poor Printers and Bookbinders are introduced *in forma pauperis*, to revive and second the petition of Messrs. Mortlock, Tonson, and other rich London bookfellers, which seems to have been neglected. It will not escape notice, that the fact upon which this petition rests, does, by no means, infer the conclusion: for, how should the printing of books make Printers or Binders want employment, and reduce them to poverty?

4th February 1709. “ Ordered, That
 “ this Bill be read a second time, upon
 “ Thursday morning next.”

9th February 1709. The Bill was read a second time. It was ordered, That the Bill be committed.

“ Re-

“ Resolved, That the Bill be committed
“ to a committee of the whole House.

“ Resolved, That this House will, upon
“ this day se’ennight, resolve itself into a
“ committee of the whole House upon the
“ said Bill.”

16th February 1709. “ Resolved, That this
“ House will, upon Tuesday morning next,
“ resolve itself into a committee of the whole
“ House, upon the Bill for Encouragement,”
&c.

21st February 1709. “ The House re-
“ solved itself into a committee of the whole
“ House, upon the Bill for Encouragement,
“ &c. Mr Speaker left the chair. Mr Comp-
“ ton took the chair of the committee. Mr
“ Speaker resumed the chair.

“ Mr Compton reported from the said
“ committee, That they had gone through
“ the Bill, and made several amendments,
“ which they ordered him to report, when
“ the House were pleased to receive the
“ same.

“ Or-

“ Ordered, that the report be received
“ upon Saturday morning next.”

25th February 1709. “ Mr Compton,
“ according to order, reported from the
“ committee of the whole House, to whom
“ the Bill for Encouragement, &c. was
“ committed, the amendments they had
“ made on the Bill, and he read the same
“ in his place, and afterwards delivered
“ them in at the clerk’s table, where they
“ were once read throughout, and then a
“ second time one by one; and, upon the
“ questions severally put thereupon (with
“ amendments to some of them,) agreed
“ unto by the House. A clause was offered
“ to be added to the Bill, that if any per-
“ son shall incur the penalties of the act in
“ Scotland, they shall be recoverable in the
“ Court of Session there; and the same was
“ twice read: and upon the question put
“ thereupon, agreed unto by the House to
“ be made part of the Bill; and some other
“ amendments were made by the House.

“ Ordered, that the Bill, with the amend-
ments, be engrossed.”

14th March 1709. " An ingrossed Bill
 " for the Encouragement of Learning, by
 " *vesting the copies* of printed books in the
 " authors or purchasers of such copies, du-
 " ring the times therein mentioned," was
 read the third time. " An amendment was
 " proposed to be made to the bill, *pr. 3. l.**
 " to leave out " refused ;" and, instead
 " thereof, to insert " refusing : " and the
 " same was, upon the question put there-
 " upon, agreed unto by the House, and the
 " bill thus amended at the table accord-
 " ingly."

" Resolved, that the bill do pass, *and that*
 " *the title be,* a Bill for the Encouragement
 " of Learning, *by vesting the copies* of print-
 " ed books in the authors or purchasers of
 " such copies, during the times there men-
 " tioned.

" Ordered, that Mr Compton do carry
 " the bill to the Lords, and desire their
 " concurrence thereunto."

Here it is material to observe, that the
 title given to the bill when ingrossed, and

the title the House resolved it should bear, when they passed it, is extremely different from the title the bill had when presented by Mr Wortley (11th January) and till it was ingrossed for the title it had, when presented by Mr Wortley, and till its ingrossment, was, "A Bill for the Encouragement of Learning, and for securing the property of copies of books to the *rightful owners thereof*:" Which plainly supposes, and implies, that the authors or purchasers of books, had, *ab ante*, a rightful property in the copies; whereas the title given to the bill, when ingrossed and passed, viz. "A Bill for the Encouragement of Learning, by *vesting* the copies of printed books in the authors or purchasers of such copies, during the times therein mentioned," as plainly supposes and implies, that the authors, or purchasers, had no right of property but what was vested by this act, and would have none after the time mentioned therein should expire.

4th April 1710. The House proceeded to take into consideration the amendments made by the Lords to the Bill, intituled,
 "An

“ An Act for the Encouragement,” &c. and the same were read, and are as follow:

The first four amendments being of no consequence, it is needless to insert them.

The next is, “ Leave out from allowed to provided ;” that is, the proviso intended to prevent exorbitant prices. All the other amendments were likewise of no consequence, except the following proviso, proposed to be added to the end of the bill; which is as follows:—“ Provided always, That after the expiration of the said term of fourteen years, the sole right of printing, or of disposing of copies, shall return to the authors thereof, if they are then living, for another term of fourteen years.”

All the amendments were agreed to, except that respecting the prices.

Ordered, That a committee be appointed to draw up reasons to be offered to the Lords at a conference, for disagreeing to the said amendment ; and it was referred to Mr Secretary Boyle, and several others (of whom

Mr Addison was one) who were ordered to withdraw immediately into the Speaker's Chamber, and report to the House.

Mr Compton reported from the Committee, that they had drawn up reasons, which he read in his place, and afterwards delivered in at the clerk's table, and are as follow:
 " The Commons disagree to your Lordships'
 " amendments in *pr. 3. l. 14.* *First*, Because
 " authors and booksellers having the sole
 " property of printed books *vested in them*
 " *by this act*, the Commons think it reason-
 " able, that some provision should be made,
 " that they do not set an extravagant price
 " on useful books. *2dly*, Because the pro-
 " vision made for this purpose, by the sta-
 " tute 25th Henry VIII. chap. 15. having
 " been found to have been ineffectual, and
 " not extending to that part of Great Bri-
 " tain called *Scotland*, it is necessary to make
 " such a provision as may be effectual, and
 " which may extend to the whole united
 " kingdom.
 " Ordered, That Mr Compton do go to
 " the Lords, and desire a conference with
 " their

“ their Lordships, upon the subject-matter
“ of the amendments made by their Lord-
“ ships to the said Bill.”

“ Same day, Mr Compton reported, That
“ they had been at the conference, and
“ that they had given the Lords the rea-
“ sons for disagreeing to the said amend-
“ ment.”

A message from the Lords, by Sir Ro-
bert Legard, and Mr Fellows:—“ Mr Speak-
“ er, the Lords do not insist upon their
“ amendment to the Bill, intituled, “ An
“ Act for the Encouragement,” &c.; and
“ then the messengers withdrew.”

The clauses of the Act, which it is necessary
to attend to in this question, are these:—

“ Whereas Printers, Booksellers, and other
“ persons, have, of late, frequently taken the
“ liberty of printing, reprinting, and pub-
“ lishing, or causing to be printed, reprint-
“ ed, and published, books, and other writ-
“ ings, without the consent of the *authors or*
“ *proprietors* of such books and writings,
“ to

“ to their very great detriment, and too of-
“ ten to the ruin of them and their fami-
“ lies; for preventing therefore such prac-
“ tices for the future, and for the encou-
“ ragement of learned men to compose and
“ write useful books, be it enacted, That,
“ from and after the 10th of April 1710,
“ the author of any book or books already
“ printed, who hath not transferred to any
“ other the copy or copies of such book or
“ books, share, or shares thereof, or the
“ bookfeller or bookfellers, printer or print-
“ ers, or other person or persons, who hath
“ or have purchased or acquired the copy
“ or copies of any book or books, in order
“ to print or reprint the same, shall have
“ the *sole right and liberty* of printing such
“ book and books, for the term of one and
“ twenty years*, to commence from the said
“ 10th of April, *and no longer*; and that the
“ author of any book or books already com-
“ posed,

* Here it appears plainly, that all monopolies of books that had been printed prior to 10th April 1710, were, by this statute, restricted to twenty-one years after that period, which cuts off all claims of right by common law.

“posed, and not printed and published, or
 “that shall hereafter be composed, and his
 “assignee or assigns, shall have the *sole liber-*
 “*ty of printing and reprinting* such book and
 “books, for the term of fourteen years, to
 “commence from the day of the first pub-
 “lishing the same, *and no longer.*” Then fol-
 low the penalties on transgressors of the act,
 and provisos for entering in Stationers-hall,
 presenting copies to the Universities, and re-
 gulating the prices. “Provided, That no-
 “thing in this act contained shall extend,
 “or be construed to extend, *either to prejudice*
 “*or confirm* any right that the said Univer-
 “sities, or any of them, or any person or
 “persons have, or claim to have, to the
 “printing and reprinting any book or co-
 “py already printed, or hereafter to be
 “printed: Provided always, that after the
 “expiration of said term of fourteen years,
 “the sole right of printing or disposing of
 “copies *shall return* to the authors thereof,
 “*if they are then living, for another term of*
 “fourteen years*.”

As

* It is clear, by this clause, that if the author dies with-
 in fourteen years after publication, the monopoly ceases at
 that

As this Act expressly declares, that authors, Printers, and Booksellers, shall have the *sole* right and liberty of printing for a certain number of years, and *no longer*, it surely would, to common reason, appear extremely plain, that, after that certain number of years was elapsed, they had no sole and exclusive right, but that afterwards any person might print who thought proper. But the London Booksellers, some time ago, whose great stocks, and residence in the capital, had enabled them to purchase all the books of any reputation that have been written in this country, though they had made immense sums by the exclusive right of printing these books during the time mentioned in the statute, were not content, but grudged to others the gleanings of a harvest by which they had been enriched; and therefore resolved, if possible, to vindicate to themselves a perpetual right of monopoly.

With

that period, as his being alive after that time is made an express condition for continuing the monopoly for fourteen years longer. This shews also, there is no right at common law.

With this view, they thought proper to maintain, that an author, or bookseller, who purchased from him, had, at common law, independent of, and antecedent to the statute, a right of property that gave them an exclusive privilege to print and sell:---that the statute was not a restrictive, but an accumulative law, which did not create a new species of property, but secured, by penalties, a property that existed before. And, upon this principle, they claimed a right of monopoly in the works of Milton, Shakespeare, and many other authors, who had been dead more than eighty or a hundred years before; and insisted, that it was competent for them, without the aid of the statute, by the interposition of the ordinary courts of justice, to restrain others from printing books of which they claimed the property, and to make them liable in damages in case they had printed such books: accordingly, they have attacked, at different times, several booksellers, both in England and Scotland. But it is remarkable, that they have never once attempted to call the booksellers of Ireland to account, tho' they have suffered most by them; which

seems to indicate, that they themselves have no faith in this new doctrine, of a right at common law, which must have supported them equally in Ireland as in Britain, tho' the statute of Queen Anne could not reach that country.

In opposition to this their doctrine, it is the object of this paper to shew, that, *at common law*, there is no such thing known as an exclusive perpetual literary property in an author after publication.

The general question, with respect to this right of literary property, is commonly said to be, Whether an author has an incorporeal right to the sole printing and publishing of somewhat intellectual, communicated by letters*? But this state of the question is really defective, and does not take so comprehensive a view of the subject as one ought to do in considering this important point; or make way for all the equity that ought and must be

* See Burrow's Reports.

be given by a decision in favour of literary property, in the true sense and meaning of that expression.

The question should be rather stated thus, Whether the author of an intellectual composition has the sole and exclusive right of communicating it to others?

If the question be confined to intellectual compositions, then musical must doubtless be excluded; and yet the composer of a Solo, or Concerto, has as good an exclusive right to his piece of music, as the author of a book. Besides, if the question be confined to something intellectual, communicated by letters, then arithmetical, mathematical, and algebraic compositions will be excluded, as these are not communicated entirely by letters, which are the signs of sounds, but by marks that stand for ideas.

In order to get at the bottom of this matter, it will be necessary to consider the different kinds of mental compositions, and the different modes of communicating them. A musical composition is mental, but not in-

tellectual. It is communicated by sounds, or by signs that stand for sounds. A good musician, when a piece of written music is put into his hands, will, merely by reading, without playing it, understand it perfectly, and perceive whether it be good or bad. Musical compositions are not literary, either in the proper or metaphorical sense of the word. No composition is understood to be literary but what is intellectual; but musical compositions are not intellectual, for they do not excite ideas in the hearer, but only sensations: yet the composer of these is, in reason and equity, equally well intitled to an exclusive right of communicating them to the world as the writer of a book.

With respect to intellectual compositions, or combinations of ideas, they may be published; that is communicated to others in different ways, according to the nature of the composition. Some combinations of ideas may be communicated by gestures.--- This is the case in pantomimic entertainments; which are regular pieces, having a plot, a beginning, a middle, and an end; so that there is no reason why the author of
such

such a piece should not have the same privilege with any other literary writer. Indeed some ideas may be communicated by gestures that cannot by words: hence it has been said, that, on certain occasions, one may look "unutterable things."

A combination of ideas may also be communicated by figures or pictures; and this, we are told, was the most ancient way of writing*. When the Spaniards anchored in the Gulph of Mexico, the people, on the coast, sent the news of their arrival to Court in writing; but that writing was a drawing of the ships and men†. We have many modern publications of great merit, that communicate ideas in a similar manner; such as Hogarth's engravings, which are as noble satires as those of Horace or Juvenal; and the combinations they express may be communicated in prose or in verse.

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* See Warburton's Div. Leg. vol. III. p. 75.

† See Recherches Philosophiques sur les Americains, tom 2. p. 204.

A combination of ideas, too, may be communicated by things. This is the case with machines; the most proper way of giving a description of which is by models, or by putting the component parts of the machine together. The principles of its construction may be communicated in a still less perfect manner by drawing, or, in the most imperfect manner of all, by description in words. This last is admitted to be a literary composition, and, consequently, the inventor is allowed to have an eternal property in this the most imperfect mode of describing the organization of the machinery: and yet no property is allowed in the most perfect communication possible, which is the model or exhibition of the machine itself.

Lastly, a combination of ideas may be communicated by particular marks, which men have agreed shall stand for the signs of sounds. Poems can only be communicated in this way, because they participate of musical composition; consequently, sound is their essence, and therefore they cannot be communicated by gesture, representation, or figures.

All

All these different combinations are mental productions in reality: when published, they convey to mankind particular sentiments, and afford information, or instruction of some kind or other; therefore, if there be property in one, there should be property in all; for there is, properly speaking, a combination of ideas, and great labour of mind, in all such compositions. But the advocates, for an exclusive right of property, only allow it to exist where the combination of ideas is communicated by letters, not in engravings or machines; although it is plain there is labour and invention in all, and consequently the same equitable common-law claim. Accordingly, the Legislature itself has considered literary property in this point of view: for engravers have, by statute, the same privileges as authors, and mechanics are almost always indulged with the privilege when a patent is applied for. Indeed, the most plausible argument for literary property applies to them all indiscriminately, viz. the protection of the invention before publication: for it is impossible to make a rational distinction between the case of a machine and a book. The former

owes

owes its birth to much thought, invention, and labour, as well as the latter; and a monopoly of the one is of as much consequence to the composer as that of the other.

It has been maintained on the other side, that the principles of a machine are general, those of a book particular. This distinction is certainly not very intelligible, and, unfortunately, proves too much; for, in this way, arithmetic, algebraic, and mathematical compositions, would be excluded; which are, unquestionably, literary, and indeed the most useful of any.

It has also been argued, that he who copies a machine does it in consequence of a knowledge acquired from seeing the original model; but that he who reprints a book, does not do it from any knowledge acquired from the work itself, but by a mere mechanical operation. Supposing it to be true, that a machine could not be copied but by a person who understood the theory of it, which is certainly not the case, the difference pointed at is immaterial. Every man has a right to use the knowledge he fairly acquires.

acquires. If he has got the knowledge of the art of printing, why may he not use it in reprinting an author's book, although he may not have obtained his knowledge of printing from such book, as the author has surely no business in what way the printer has acquired this art? It is conceived, an author's claim to an exclusive property in his ideas must rest upon his invention and labour; upon his own merit, not on that of another. Now, it is plain, that the title upon which he founds may be claimed, with equal justice, by the inventors of a machine.

It has, with apparent plausibility, been maintained, that a machine made by one man is not the same invention with a machine made by another; whereas, the copy of a book reprinted is precisely the same original performance. It is certainly true, that a model of a machine, made by the purchaser, cannot, physically, be the same with that made by the inventor; but it is the same for all the purposes intended, and the execution of it required the same mechanical powers and labour. It may, indeed, be better or worse made; but the idea

of goodness or badness in the execution of the work is excluded by the state of the question.

As to combinations communicated by engravings, it is obvious they likewise are the production of invention and labour. All these different compositions stand upon the same footing; and as an exclusive property is only held to exist in one of them, hence I infer there is property in none of them. It is either unlawful to interfere with any, or it is lawful to interfere with all of them,

It has been asserted in some of the arguments on literary property, that an author has not only an exclusive right to the thoughts themselves, but to the stile and mode of expressing them. It is, however, not very obvious how he can have a right to the stile, except in so far as it excites ideas. For, surely, if a man should throw together a multitude of English words without any connection, that would not be esteemed a literary composition. It would, no doubt, excite ideas, for every word is itself an idea; but there would be no combination of them requiring

quiring invention and exertion of the mind on his part, consequently he could have no exclusive right to them. No man, therefore, can have any property merely in words; it is only in so far as they communicate and combine ideas that he has an equitable claim to the exclusive right to the composition, as being the production of his labour and genius.

From this it seems to follow, that it is not material what the particular mode of communication be; so that if a man communicate all my ideas, though he use different words, this is clearly an invasion of my property, and this leads to the question, Whether translations and abridgments of a work be violations of literary property? Translations clearly communicate all the ideas of the author; and therefore in a question with him, the translator must be reckoned a violator of his property; altho', perhaps, in a question between the translator and one who printed his book, the latter might prevail. The same argument would be good in a question between an author and his abridger.

The leading question in all such cases is, Whether, at common law, a man can have the sole and exclusive right of communicating a mental composition to others ?

All the possible combinations of ideas are not infinite, although they are more numerous upon some subjects than upon others.— Upon speculative subjects, they are limited and different. Men hit upon the same combinations, and entertain the same opinions as to them, in different parts of the globe, without any communication*. The same ideas have often occurred on metaphysical subjects, mathematics, arithmetic, and the arts. It appears from the history of India, that the Philosophers there have adopted all the systems, even the most whimsical of other sages in different parts of the universe : nay, it is said, that Paschal, by the mere force of his own genius, demonstrated, without assistance, the first thirteen Propositions of Euclid.

But

* See *Recherches Philosophiques sur les Américains.*— Part V. tom II. sect. I. p. 188.

But though men will often hit upon the same combination of ideas in considering certain subjects, yet they will necessarily vary in their stile and mode of expression; not only on account of the different structure of languages in different nations, but because in every language the various ways of combining words are so numerous, it is almost impossible two persons should, at any time, adopt the very same expressions. This, however, does sometimes happen in mathematics and other abstruse sciences; for, in these, words are not so often used as signs, and the nature of the subject, besides, excludes any metaphorical expressions.

Combinations of fancy and fiction are vastly more numerous, tho' it is surprising that a greater number of original combinations have not made their appearance; and equally surprising, that the same thoughts and arguments have not often occurred to different people; hence it is from the want of invention, authors have too often borrowed their ideas from former writers. How much has Virgil borrowed from Homer?—How much Tasso and Ariosto from both?—How much
Milton

Milton from them all? But as they have written in different languages, the theft is not so perceptible; and, at the same time, each of them has very great merit on account of the fine versification, for sound itself is certainly the essence of poetry.

When a man combines ideas on any subject, it is clearly possible that another may be putting the same ideas together, if the subject be speculative. When a man has combined ideas in his own mind, it may, no doubt, be said, that he has occupied them; but it is plain that he cannot, on this account, prevent any other from doing the same thing; he cannot, by the mere combination in his mind, attain an exclusive possession of the ideas combined. If, for instance, a man in America has formed the same combinations of ideas with a man in England, he has the same merit, he has exerted the same invention, and the same labour of mind, consequently the one has just as good a title to claim the property of the thoughts as the other. When a man has combined ideas in his own mind, it is plain he has a power over them, a power to com-
muni-

communicate them to others or not as he thinks proper. It may be doubted if it can be properly said he has a right to do so; for the word *right* involves the idea of legal interposition; whereas it is plain, that, as long as ideas remain in the mind, no law can create a right of property in them. However treasonable a man's mere ideas may be, the law does not punish him for them, neither can it reward him, however noble and virtuous his sentiments.

If a man write down ideas he has combined, as long as he keeps that writing in his own possession he has no exclusive right to the thoughts contained in it: he has, indeed, as he had before, a power of communicating them to the world; but as long as he keeps them to himself he has no real property in them, the law cannot protect them, and it is plain he cannot hinder any other person to combine the same ideas, write them down, and publish them.

Compositions in prose and verse were known long before the art of printing or writing was discovered. Savages in different coun-

countries, where neither of these arts are known, have their love and war songs; and these amorous, or martial ditties, are certainly not composed in hopes of gain, but for amusement and the love of fame. If one savage repeat his song so often to another, that the latter can, by attention, learn to repeat it, upon what principle of justice can the savage author complain of his neighbour for rehearsing it? If, indeed, he should repeat it as his own composition, that, perhaps, might be complained of as ungenteel and ungenerous; but such conduct could never, surely, be considered in any other point of view.

If it shall be supposed that a savage could derive profit from repeating his neighbour's song, the question, Whether he could be complained of for doing so? would depend on a great variety of circumstances. If, for example, he should chant it at a great distance, and in a foreign country, which the composer might never see, perhaps never hear of, what injury does he sustain? Nay, suppose his rehearsing it should be attended with gain, where is the injustice in the repeater's reaping-

reaping advantage from his memory as well as the author from his invention.

Even after the art of writing was introduced, no such thing as what is called copy-money was for some time known; not until the art of printing was for some time discovered *. In ancient Rome we are informed it was expensive to be an author †. It is clear, therefore, by the common law, before printing was introduced it would be considered as no injury done to an author to publish his works; on the contrary, he must have considered it as a very great favour if any person, by doing so, saved him the expence attending publication.

The argument for literary property then resolves into this proposition, that there is a common law right without any precedent; or in other, and perhaps better words, that in a refined state of society rights emerge which were not known in more uncivilized times, and which the law is now bound to protect.

* See Pliny's Epist. lib. 3.

† See Juvenal, Satire 7.

protect. It is said too, that authors should alone be entitled to reap the fruits of their labour, and all others ought to be prevented from interfering with them. The common law protects the copy before publication; therefore it is maintained it should protect it afterwards, unless it can be held that, by publication, an author relinquishes the previous exclusive right he had acquired to the manuscript; but that he does not mean to do so by selling a single copy for a trifle: for it is contended he does not mean to transfer his right to deal in the trade of selling his book, but only a right of perusal. And it is said to be further fit that an author should have an exclusive right of printing his work, in order that he may see it be correct, and that he may have an opportunity of altering or amending it. From all which it is inferred, that it is a moral wrong to publish another's work; and that it is just and fit he should have an exclusive right to do so himself.

In answer to this ingenious argument it is maintained, that it is no doubt true there is a common law without precedent, as rights must,

must, from time to time, occur among civilized nations, and require the aid of law to protect them, which were not known in a ruder and more unpolished state of society; and these ought to be made effectual, unless incompatible with the public welfare: for, with regard to such rights, a Court of justice has, in some measure, a legislative power. Rights that have long had the sanction of law, will not, without reluctance, be cut down on any occasion, though a change in the state of society and manners of the people may perhaps render them somewhat hurtful. But rights that have no foundation in usage or law may be rejected by Courts of justice, if repugnant to utility. But an exclusive right of property in authors is, unquestionably, a new right, and therefore may, with propriety, be rejected if prejudicial to society*.

With regard to the property in the original copy of a book before publication, it is perfectly obvious that an author has a good title

* See Lord Kaimes's Principles of Equity, B. ii. chap. 2.

title to the exclusive property of his book before publication: for the author has, unquestionably, a complete right of property in the manuscript, which is protected by the common law as a corpus under the dominion of the author. It is said, however, that in England an action could not be sustained to recover the manuscript as being the property of the author. This perhaps may be the case in England; but in this country surely an action would be competent for recovery of manuscripts as well as for any other property; and if they could not be recovered, an action of damages would undoubtedly lie, to what extent would depend on circumstances.

But it is not the right in the thoughts and style that is protected in the manuscript before publication; for a person may have a legal right to a manuscript, to the ideas and style of which he has no right: for example, if one should find a manuscript containing the books of Livy that have hitherto been amissing, he has undoubtedly no right to the sentiments or style; these are Livy's, not his; and yet it is thought he would

would have a legal right to the manuscript before publication, and might get a warrant to search for, and seize it wherever he could find it. If he could not recover it, he would be entitled to damages from the trespasser who carried it off; and if the latter had printed it, and made profit by it, he would be obliged to account to the proprietor for the profits. This argument, therefore, with respect to a person's having a legal right to a manuscript before publication, certainly proves too much; for it tends to prove, that I have a right, not only to my own ideas and style, but a property in the thoughts and style of another. An author's manuscript is protected by the law before publication, not because he has a right to the mere sentiments and style, but because, by writing down his ideas, he makes a combination of them, and brings them into such a form, as to render them capable of becoming a subject of property; the paper manuscript being a corpus or tangible substance, entitling the author to claim it as his property: for paper, by writing on it, becomes a different thing from what it was before, and therefore, upon a theft or robbery of it, the
writer

writer ought, not only to have action for the paper, but for the specification ; and what ought to be the amount of damages on that account must be arbitrary.

It has been argued, that, supposing a man does not carry off a manuscript by force or theft, but copies and publishes it clandestinely, and without the author's consent, no action of trover or trespass would lye on the common law in England, although he has deprived another of a valuable right. There can be no doubt that there ought to be a remedy in this case, and whatever difficulty the subtleties of the law of England may occasion, there can be none in this country. Action would lye against him for delivering up the copy he had made ; for, in having clandestinely copied the manuscript without the proprietor's consent, he was guilty of an illegal act, and on account of this illegal conduct of his, he must either restore the copy, or be liable in damages. In support of this proposition, we need only refer to the civil law, where it is expressly laid down in the title of the Institutions "*de Obligationibus que ex delicto nascuntur, Delictum*"

“ *licitum est factum illicitum sponte admissum, quo
 “ quis et ad restitutionem si fieri possit et ad pœnam
 “ obligatur.*” The only complete restitution
 possible in such a case as this, is restoration
 of the copy made, so that the proprietor
 may regain exclusive possession; and if it
 cannot be restored, damages must be award-
 ed on the principle, “ *loco facti imprestabilis
 “ subit damnum et interesse.*” This argument
 likewise proves too much; for where a per-
 son copies a manuscript in the possession of
 another, though not composed by him, with-
 out his consent, he deprives him of a valu-
 able right, and he is, undoubtedly, entitled
 to have legal redress for any such violation
 of his property, as much in the one case as
 in the other.

The result of the whole of the argument
 with respect to a person's right to the ma-
 nuscript seems to be, that, after an author
 has written down his ideas, he has a power
 of publishing them or not as he thinks pro-
 per; consequently, he has a power of giving
 a priority of publication to whom he plea-
 ses; and whoever deprives him of that pow-
 er, does him an injury, and must repair the
 loss

loss thereby occasioned ; of course, damages must be awarded as a solatium to the author ; and, *in modum pænæ* of the trespasser ; but in such a case, no incorporeal right is protected by the law ; for it neither does nor can countenance such a right. It has been said, the law protects a man's fame and reputation ; but fame and reputation are inherent in a person, and any attack upon the one or the other, only intitles the injured individual to reparation. Hence, no action of defamation, it is believed, would be sustained in this Court, except in so far as it concluded for damages ; for this Court would certainly have very great difficulty in sustaining action against any person for depriving an author of mere literary fame ; and if such action should be deemed competent, the decision would only prove that such right is inherent in a person, not that there is an actual property in the mere ideas of an author.

As to the moral wrong, said to be committed by persons interfering with an author in the publication of his work, many cases may be figured in which it would be very ungenerous and ungenteel to do so ;
in

in particular, it would be extremely unhand-
some to presume to publish a second, and
cheaper edition, immediately upon the pub-
lication of a book. But however improper
this may be in a moral point of view, the
question still is, Whether this be such a
wrong as the common law can prevent? for
there are many acts, inconsistent with rigid
morality, which the common law cannot pos-
sibly punish; *non omne, quod licet, honestum est.*"

Every man has a right to profit by his
own knowledge. He who buys a book pur-
chases every use to which it can be applied,
and he has as good a right to profit by his
knowledge of the art of multiplying it, as the
author had by his skill in composing it.—
The author's claim to a monopoly, until
he be reimbursed of any expence incur-
red, or until he receive a proper recompence
for his trouble, is but an imperfect right,
which it may be ungenerous to interfere
with, but which the common law cannot
protect. The only remedy an author there-
fore has, is, to apply to the Crown for a
patent, and that, all authors have, in fact,
already obtained; for the act of Queen Anne

must be considered as a standing patent to authors.

It may, no doubt, be said, that the author's intention in publishing a book was to give to the purchaser of a single copy, a right of property to that individual copy, but no more. To this it is answered, that whatever is the necessary consequence of an action, must be deemed intended by it. Now the necessary consequence of printing and selling a book, is to make it common property; and no private bargain betwixt the author and bookseller, can prevent a purchaser from making what use of his purchase he pleases. If, indeed, an author could show that he sold a person a copy from which he had reprinted, when it was an express condition in the sale that he should not reprint; in that case, perhaps, action might lye upon the contract entered into between them: at the same time it is almost impossible, by any bargain or proviso, to prevent every person purchasing the book from reprinting it.

An author's entering his book in Stationer's Hall, no doubt, has this effect; but this is
solely

solely *vi statuti*, not in consequence of his having any common-law right of property in the book.

This refined idea of literary property is surely inadmissible in a Court of Justice, as it renders judges arbitrary in all questions coming before them. Since then no general rule can be laid down for the determination of such questions, this of itself shows, that there is no such thing at common law as literary property; for surely no right in equity can exist, that cannot be ascertained by general rules*.

Besides, this pretended right in authors, is inadmissible in another point of view, as being incompatible with the common rights of mankind, and other regulations of law.

The Legislature, indeed, may create any right it pleases, however anomolous; but the

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* See Lord Kaimes's Principles of Equity, p. 10. Edin. 1760.

common law will adopt nothing that is inconsistent with the general principles of justice and utility ; it will admit of no right that is inconsistent with its first principles and general rules. But this claim of authors to an exclusive right of property in a book after publication, is highly inexpedient, as it both gives a right of suppression, and confers a power of extortion. *2dly*, It is impossible to ascertain or define it ; and a multitude of inextricable disputes must continually arise from it. *3dly*, It cannot be transmitted in the way in which property is transferred, or affected by the legal diligence of creditors. *4thly*, This anomalous right is an encroachment upon the natural liberty of mankind.

It does not follow, that because the Crown has a clear right to the sole exclusive publication of Acts of Parliament, that every author has an exclusive right of property in his book after it has been published. The reason for giving the Crown an exclusive right to print Acts of Parliament is, that they must be promulgated ; which was at first done by proclamation, and now by printing.---

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As the State is materially interested in the publication of statutes, it is necessary that there should be an exclusive right to print them vested in the Crown, that they may be accurately published; besides, there must be a copy which will bear faith in judgment. For the same reason, the Crown has an exclusive right to the printing of Bibles; because the Bible, too, is a rule of conduct for the subject, and strange consequences might follow if incorrect editions of the Sacred Text were allowed to be published.

With regard to the Act of Queen Anne, it does not appear that any injunctions were granted in Chancery before it, and the injunctions after it do not show that the Chancellor thought authors had a property in their works at common law, but only that he thought the statute vested a property, or right; and that a common-law action lay for damages on the statute, and not merely an action for penalties. This opinion seems to be supported by every principle of justice; for, when a statute creates a right, for every violation of that right there must be a remedy: he who transgresses the statute
commits

commits a wrong, and must repair any damage sustained by such transgression. The superadding penalties against offenders neither did, nor could mean to annul, the preceding clause which creates the right; so that it is clear, although there was no such thing as literary property before the statute at common law, yet there being such a property created by this act, an author is entitled, upon any violation of it, to sue for damages at common law, as well as for the penalties specified in the statute.

The general conclusion to be drawn from what has been stated, seems to be, with regard to the property claimed at common law, independent of the statute, that the most plausible argument, offered on the part of the Booksellers, is, that when an author has bestowed much time and labour in composing, and expended great sums, perhaps his whole stock, in printing and publishing an edition of a book, it is manifestly unfair and unjust, that another, the first day that the work is published, should purchase a single copy, and set about a cheaper edition, by which he not only in-

tercepts

tercepts the profits the author would have drawn, but brings upon him a certain and ruinous loss, by stopping the sale of the copies he had thrown off: that the author has evidently a right to prevent this; and wherever there is a right, there must be a remedy, and a remedy in course of common law or equity.

That the author of a book, or of a machine or an art useful in life, has an equitable title to insist, that he should have the exclusive right of selling his work for such a length of time, as ought to reimburse him of his expence, and recompence him for his trouble, is indisputable; but it by no means follows, that this right ought to be enforced by the ordinary Courts of justice. The poor have a most equitable title to demand maintenance from the rich; but it was never imagined that, independent of any statute, they could have brought actions before Courts of law or equity, for establishing rates upon the rich, sufficient to subsist them. Courts of justice can only interpose their authority to make perfect rights effectual, not imperfect ones, as all those just
now

now mentioned evidently are, as well as many others arising from the obligations of friendship, gratitude, and benevolence. When a man has discovered any useful theory in mathematics, or in any other science, it is ungentle and ungenerous in any other to assume the honour of the invention to himself, or falsely ascribe it to any but the true author: yet it surely cannot from that be inferred, that the true author could bring an *actio injuriarum*, or of scandal and defamation, against any person who should falsely assert that it was either his own or another's. In the same way, it may perhaps be ungentle and ungenerous to interfere with an author, in the trade of printing and selling his book; but it is not therefore a consequence, that the author will have a right to bring either a civil process for damages, or a criminal one for robbery or theft. The circumstance of his having been at much pains in composing, and at great expence in printing his book, may give him an equitable claim, for having a temporary exclusive right conferred upon him; but it never can *ipso facto* establish a perpetual property in him. The proper remedy, therefore,

fore, is an application to the supreme magistrate, or legislature of the country, for a privilege; and accordingly that was the method constantly followed before the statute passed, and it is the only one yet pursued in foreign countries, whose lawyers have no notion of an exclusive right in authors at common law.

With regard to the act of Queen Anne, it was evidently intended to be a general standing patent, as Lord Hardwicke called it, to authors and booksellers, and to save them the trouble and expence (from 80 to 100 l.) of applying to the king for a privilege every time they printed a new book: at which time, it is often uncertain whether the profits would pay that expence.

The writers for the booksellers argue, that it appears the legislature understood, that authors, and those who purchased from them, had a property antecedent to the statute, because the preamble of that statute sets forth, that a liberty had been taken of printing, reprinting, and publishing, books and other writings, without the consent of the *Authors*

or *Proprietors*; which, it is said, ought not to be reckoned a mere inaccuracy of expression, because “ the sentiment necessarily “ supposes, that they used the word *Proprietors* in its strict and exact signification, “ it being a representation of the bad effects “ from the liberty taken of printing and “ reprinting books, without the consent of “ their authors, or their assigns *.”

The expression here founded upon, is palpably an inaccuracy, owing to the inaccurate expression in the petition from the booksellers and others, which procured the act, and is partly transcribed into its preamble. The bad effects, mentioned in this act, are the discouragement of learned men, and loss they had sustained. These might afford a good reason for *vesting* the property in them, but not for holding, that they had *ab ante* a property.

The sense of the legislature upon this point

* See the Letter to a member of Parliament, on this subject, published in 1747.

point is not to be gathered from an expression in the preamble; and that it lay quite the other way, is apparent from the amendment made upon the title of the act. From the history of the procedure in Parliament, it is plain, that the act was obtained by the bookfellers: the bill, no doubt, would be drawn by gentlemen in their interest: accordingly the title first given to the bill, as has been already observed, supposed and implied, that authors and purchasers from them had, *ab ante*, a property in their books; but this title was amended and altered, before it was engrossed, in such a manner as to suppose and imply the direct contrary. It was then entitled, "An Act for the Encouragement of Learning, by *vesting*," &c. This alteration sufficiently indicates the sense of the legislature, and cannot be opposed by an expression in the preamble, which was not corrected, either because it was not adverted to, or because it was not thought capable of the construction the bookfellers put upon it.

The writers for the bookfellers lay hold likewise of a proviso in the conclusion,

R 2

"That

“ That nothing in this act contained, shall
 “ extend, or be construed to extend, ei-
 “ ther to prejudice or confirm any right
 “ that the said Universities, or any of them,
 “ or any person or persons, have, or claim
 “ to have, to the printing or reprinting any
 “ book or copy already printed, or hereaf-
 “ ter to be printed.” They admit, that one
 purpose of this proviso was, to leave unde-
 cided all claims to exclusive printing, from
 patents, licences, &c. But they contended,
 that “ the large wording of it appears to
 “ have a particular aim at obviating such
 “ misconstruction of the statute; as if the ad-
 “ ditional temporal security, thereby given,
 “ either implied, that there was no right of
 “ property before, or else abrogated what it
 “ found*.”

But it is obvious, that if the words of this
 proviso are interpreted to mean any more
 than a *Salvo* upon all patents, licences, &c.
 (such as law-printers, king's printers, &c.)
 they must operate as a repeal of all the pre-
 ced-

* See the Letter to a Member of Parliament.

ceding clauses; for the bookfellers surely will not deny, that this law was passed, in order to confirm, by penal functions, the rights of authors and bookfellers.

But what renders the question entirely insignificant, whether the legislature understood authors and bookfellers to have *ab ante* a right of property,---as also the argument for the bookfellers, that “ the act establisheth
“ no right, but takes up a right already established, which it guards by additional penalties *,” is, not only the title of the act, which establishes and vests a right, but the enacting clause, which ordains, that authors of books, or purchasers from them, shall, in one case, “ have the sole right and liberty
“ of printing such book and books, for
“ the term of one and twenty years, to commence from the said 10th day of April, and
“ no longer.” In another case, “ that they
“ shall have the sole liberty of printing and
“ reprinting such book and books, for the
“ term

* See a Vindication of the Exclusive Right of Authors, written in 1762.

“ term of fourteen years, to commence
“ from the day of the first publishing the
“ same, *and no longer*.” And, “ That, after
“ the expiration of the said term of four-
“ teen years, the sole right of printing or
“ disposing the copies *shall return* to the au-
“ thors thereof, if they are *then living*, for
“ *another* term of fourteen years.”

Supposing authors to have had a right of property antecedent to the act, yet it cannot be disputed, that the Legislature could annihilate it altogether, or new-model and abridge it at pleasure. The Legislature has, in the most explicit terms, declared, that authors, and purchasers from them, shall have the sole right of printing their books for a certain term of years, and *no longer*; which is the same thing with expressly declaring, that, after that period of years, other persons should have the right and liberty of printing books as well as they, though it does not exclude them from printing in common with others. Though authors, and those in their right, had a perpetual right of property in their books, yet there was no iniquity in rendering it temporary by this act,

on

on account of the severe forfeitures and penalties, by which their right is protected for a long tract of time, during which, if their books are good for any thing, they will draw much more than suffices to reimburse and recompence them : and it ought not to escape observation, that authors have never shown any dissatisfaction with the regulations of this statute, a junto of booksellers only have complained of it.

It only remains further to be suggested, that every consideration of public utility strongly opposes the perpetuity claimed by the booksellers, which, supposing the question to be embarrassed with any doubt or difficulty, should turn the scale against them.

The most cursory reflection must satisfy every person,

1st, That the perpetuating a monopoly of books, though it will tend to enrich and aggrandise about half a dozen of booksellers will, at the same time, depress and discourage all the other booksellers and printers in the kingdom.

2^{dly},

2dly, That it will occasion slovenliness, inelegance, and incorrectness in printing.

3dly, The limiting the monopoly of books, and opening a larger field for the art of printing, would greatly increase the revenue arising from the consumption of paper.

Lastly, The perpetuating the monopoly of books must, inevitably, enhance their prices beyond all bounds; the infallible consequence of which is, to retard, and, indeed, stop altogether the progress of learning.--- This has been complained of as the consequence of patents and privileges, from their first introduction; and that there is as much reason, if not more, for exclaiming against that abuse at present, as formerly, must be felt by every man, who is desirous of having a tolerable library of books, and is not possessed of a most opulent fortune.

Of Impartiality.

AMONG the many who have attained an eminence of reputation, much superior to what their talents and exertions deserved, Solon, as the political legislator of Athens, may, with reason, be numbered; for he declared, that he had given the Athenians, not the laws which were best in themselves, but the best laws they were capable of receiving.--- Now this lawgiver of great genius, has always prevailed on his people to embrace what system he judged to be most conducive to their welfare, and framed it with such art and sagacity, as if requisite, either totally, or at least in a great measure, to change their character, and new-model their manners; witness Moses, Lycurgus, Numa, and especially Orpheus.

DICTUS AB HOC LENIRE TIGRES RABIDOSQUE LEONES.

Besides, it is clear enough, that Solon did not give the Athenians even the best laws
s
they

they were capable of receiving. for the reign of his political laws was very short, he himself lived to see them abolished: those of Moses govern the Jews at this day.

Another, and indeed the chief proof of this position, is the law by which he ordains, under a severe penalty, every citizen to take a side when the State shall be divided into parties: his object (according to Plutarch) being to prevent a selfish apathy, and oblige men to take a part, and share danger with the worthy. An enactment at once inconsiderate and unjust; for reflection on the nature of mankind, or recollection of what experience long before his time had proved, must have satisfied him, that *all might be in the wrong*, egregiously, violently, equally so; but in such case the lover of truth and justice, though neither selfish nor timid, cannot enroll himself with any class; he will dissent from every one of them, and the law must operate as a species of persecution for conscience sake, and stimulate to dissimulation and duplicity of conduct.

The impartial citizen must, in such a case,
feel

feel very disagreeable; somewhat like a man who shuts his ears when looking at a dance, and very like a man perfectly sober in a large company perfectly drunk. According to Solon's law, Cato ought to have been punished, for he sided neither with Cæsar nor Pompey; *cum alii ad Cæsarem inclinarent alii ad Pompeiun solus Cato fecit aliquas et reipublicæ partes.* Senec. Ep. 104.

A justly-celebrated writer*, whose ideas, in general, coincide with mine more than those of any of the many authors I have read, has applauded this law in one of his Treatises; but he had not at that time sufficiently weighed its consequences. Accordingly he, in effect, contradicts himself in another work; there, indulging his own generous sentiments, not criticising another's, he does ample justice to the man "who feels
 " himself strong enough to walk alone in the
 " free career of his own thoughts," and concludes, " he who wishes to be equitable to
 " the whole world, he who wishes not to
 s 2 " fall

* Mercier Essai sur l'art dramatique, cap. 20.

“ fall into gross errors, must not adopt any
 “ party.” His words are :---“ Si l'on veut
 “ être équitable envers tout le monde, si l'on
 “ ne veut pas commettre de grossières er-
 “ reurs, il ne faut point adopter de parti.”
 Mon. Bonnet de nuit. S. ii.—p. 32.

Of the Ancient Democracies.

ACCORDING to Rousseau, in his famous *Treatise on the Social Contract*, there can be no free government but a pure democracy, that is, as the Greek word imports, a *People Government*; the citizens assembling *in person*, to legislate, deliberate, and determine on all public matters: from the instant they chuse representatives, they part (he affirms) with their liberty, and are annihilated.

If so, it is physically impossible, that a State can possess a free government, unless its territory be narrow, its population very limited, and its climate excellent; for great numbers must be excluded from the national assembly, if their homes be at a considerable distance from the place where it meets. No building can contain, and no voice can reach a very great multitude; and deliberations under inclement skies must be frequently

quently prevented, or interrupted, by the weather.

Supposing, however, the State fitted in all these respects for a pure democracy, another obstacle presents itself. If the citizens must assemble in person to do the public business, how is the work necessary for the maintenance of the society to be performed? In the ancient democracies, it was by slaves, who far outnumbered the free men. The slavery then of the *many*, is necessary to procure the perfect liberty of *the few*. This, Rousseau does not dispute: he says it may be so (*peut etre*,) and endeavours to account for it by the state of society being (as he maintains) contrary to nature. But is not the system which reduces the multitude to extreme slavery, that the few may enjoy a perfect liberty, much inferior to that which confers liberty in a considerable, though not extreme degree, on all?

The truth is, these democracies have been most improperly held out by Rousseau, and many other writers, as objects of admiration to mankind. They were, in reality, despotic
aristo-

aristocracies, both destructive and disgraceful to humanity, by reason of the slavery on which they were founded. The free men were the few in comparison with the slaves; and these were kept in the most humiliating and distressful condition; considered not as persons, but things, and exposed to every species of cruelty and outrage. This observation applies to the American States during the war*.

As to the *love of their country*, of which so much has been said, it is evident, that if that sentiment be set in opposition to good will to mankind in general, it is an affectation only of disinterestedness, being, in reality, but an extension of selfishness. "Dulce et decorum est pro patria mori." Undoubtedly, if the cause of your country, which calls for that exertion be just; but if it be the cause of plunder or murder, how can it be dulce or decorum? A man may
owe

* See a Pamphlet printed in London 1795, entitled Rights and Remedies, p. 84, 85, in the notes.

owe duty to his country, however detestable its system and conduct may be; but he ought not to love it, indeed he cannot: in the same way he owes duty to his father, though he be a robber or murderer; but he ought not to love him, indeed he cannot.

"as Charters, the Bill of Rights, the Statute

~~book, and, above all, we have a common~~

"sense and reason." In other words, perhaps

as proper *Of the British Constitution.*

is a common law of the Constitution as well

as of the land. ~~It is not a mere new case~~

by inference from acknowledged principles

of right and expediency. *VINCERE SCIS HANNIBAL, VICTORIA OTI NESCIS.* LIVY.

gives a vast number of judicial cases must

THERE is no proviso in Magna Charta, the Bill of Rights, or any express statute, for securing to the subject jury trial, or the liberty of the press.

We have no code, or instrument, ascertaining the nature of our Government, and defining the functions and powers of its different component parts; we have only some declarations and usage. It is the last which secures the liberty of the press and jury trial.

The late Lord Chatham, in one of his Speeches, finding it necessary to specify what the Constitution is, says*, "We have Mag-

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" na

* See his Life in the 4to edition.

“ na Charta, the Bill of Rights, the Statute
“ Book, and, above all, we have common
“ sense and reason.” In other, and perhaps
as proper words, he might have said, There
is a common law of the Constitution, as well
as of the land. Both determine new cases
by inference from acknowledged principles
of right and expediency. In every coun-
try, a vast number of judicial cases must
occur, for the determination of which, nei-
ther statute nor usage suffice; they must be
determined by the common law, which is
the result of justice and utility combined.--
In the same way, in all countries, even in
those which have written constitutions, ma-
ny political questions must arise, for the de-
termination of which the written constitu-
tion is inadequate. Such must be determin-
ed by the common law of the Constitution.
e. g. By the American Constitution, the Pre-
sident, with the approbation of the Senate,
has the power of appointing a secretary : in
1789*, a question arose, and was keenly de-
bated

* See the Congressional Register for 1789.

bated in Congress, Whether, after such secretary was appointed, he was removeable by the President?

I find that an idea, somewhat similar, had occurred to a writer of the other hemisphere, but he has not followed it far enough, so as to bring it to a point, or draw any precise consequence from it. In the postscript to the Royal Gazette of Jamaica, from July 1730 to 6th August 1791, vol. xiii. number 32, it is stated, that a correspondent observes, "It has been said that the people of England have no Constitution. But what, according to some systems of politics are constitutions? Bits of parchment, which the people may, at one period, consider as the palladium of their rights, and at another period annihilate as useless, and worse than useless repositories of absurdities. The people of England have, however, high ideas of personal, social, and political freedom; and their ideas are inseparably connected with certain principles, which they wisely supposed form the great outlines of a constitution. This constitution is written on their hearts. It

“there has an existence, an influence, an
 “operation, which are superior to effects
 “produced by perishable manuscripts, or
 “Parliament declarations. The Constitu-
 “tion, like the immutable principles of *com-*
 “*mon law*, approves itself to the reason and
 “conscience of every free-born English-
 “man; and hence we find the natives of
 “that country, like the free citizens of the
 “United States, have a high sense of the
 “superior rank they hold in the commu-
 “nity of mankind. If the English nation
 “has no Constitution, what volumes have
 “been written by some very wise men on
 “a nonentity!”

In the debate in the House of Commons
 on the legality of raising troops by benevo-
 lence, the Attorney-General having argued
 that there was nothing in the Bill of Rights
 against it*, Mr Fox answered, “From
 “the manner in which that bill had been
 “lately used, he foresaw infinite mischief;
 “for he should soon expect to hear that all

the
 “great outlines of a constitution. This con-
 “stitution, which they wisely supposed form the

* Star, 29th March 1794.

“the rights of Englishmen were contained
“within that bill alone. This was a mis-
“chief he seriously dreaded from the late
“use made of that bill, but he said it only
“remedied the specific grievances which
“called for immediate regulation; thus it
“provided the right to petition the Crown,
“because persons had been opposed in using
“that right. It said nothing of the right
“to petition Parliament; for this reason, be-
“cause the subject had not been interrupt-
“ed in the exercise of that right.”

This seems to be a just and valuable ob-
servation, and might have been further il-
lustrated by what has been stated above,
that the Bill of Rights does not provide for
the liberty of the Press or Jury trial, and
that there is and must be a common law of
the constitution. Had we no constitution but
what is written we should have very little
liberty. The Attorney-General's argument,
however, shews the propriety of a full writ-
ten constitution. At the same time, as our
King and his Ministers have all along admit-
ted that this is a free country, it follows from
that single position, that we are entitled to
all

all the rights which men must possess in order to be free; but then what the extent of these is which constitutes freedom, may be contraverted; and therefore, it had been better to have fixed them at once as far as human foresight could go. The French political writers considered the English Government as a republic*; Democracy is, but Republicanism is not, by any means, incompatible with Royalty.

Of

* Mercier, in his *Hist. de l'an.* 2440. v. 3. says, " Les hommes seroient visiblement disgraciés, s'il n'y avoit pas un combat interieur, et toujours subsistant, entre la Liberté & l'autorité; & voila ce qui a maintenu l'admirable Constitution d'Angleterre, formée Republicaine si heureusement combinée," et *ibid.* vol. II. he says, " On l'appelle Angleterre une Republique Monarchique." Royale, he had better said, For there is a great difference between a King and a Monarch. In Britain, the King has but a share in the Government. Accordingly the same author, in his last work, *Notions claires*, vol. I. c. 3, corrects himself. " Il ne faut point dire l'Angleterre est une Republique car elle ne ressemble en rien a la Republique Romaine, il faut dire c'est un beau Gouvernement & le moins imparfait des tous les Gouvernements modernes." These French authors, however, have, it is plain, attended more to the theory than the practice of our Constitution; now, that they have felt it, they would, perhaps, express themselves differently. One of them, indeed, many years ago (but he is very paradoxical) maintained, that
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Of Reformation.

SEVERAL writers have asserted, that there is no mystery or difficulty in governing mankind.

This may be true, if, by governing, be meant the mere keeping together a number of men in society. But if the object of government be, what it certainly ought to be, the greatest possible happiness of its subjects, the problem must be difficult every where.

The difficulty must be very much increased where there is a great expanse of territory,
that

the praise bestowed by Montesquieu on the British Constitution was absurd, and that the King of Britain may make himself absolute when he pleases, without even changing exterior forms and appearances. See Linget Annales Politiques, vol. I. p. 296. These Annals were published in London, whither the author had retired from persecution.

that territory very populous, and the nation not merely agricultural, but manufacturing and commercial too; for, in every such country, there must be a multitude of complicated and jarring interests to guide and controul. For the same reason, the law of every such country must be voluminous and intricate*. Beccaria exclaims, "Happy the country in which law is not a science!" but the idea would have been expressed more clearly and fairly, had he exclaimed, "Happy the country which is poor, or agricultural only!" How intricate and abstruse must the system of bankrupt-law be wherever it is requisite!

In every such country, time alone must introduce abuses, in the various systems of Government, Law, Education, and many others of importance, even supposing them
to

* I have since found this idea very well explained in "Ami des Hommes," first published in 1758, and from which many authors have borrowed a great deal; "un souverain, qui voudroit d'un part abréger le code de ses sujets, et de l'autre étendre leur industrie, chercherait la pierre philosophale." Vol. II. p. 58.

to have been originally composed on what then appeared to be the best plans, (a case that has but rarely happened,) indeed it is only at the settlement of a new colony that the legislator has full scope for aiming at perfection.

But the generality of these systems, having either been thrown together by fortuitous circumstances, or formed before experience had ascertained their true principles, they do, and must abound with defects and abuses, which occasion to their subjects much inconvenience and distress that might have been avoided, and withhold from them much comfort and happiness that might have been procured.

As such defects and abuses are unavoidable, the people ought to be patient of all that are not excessive, and their rulers disposed to listen to all proposals of amendment; listen, for to adopt is a very different thing.

The promoters of Reformation ought seriously to consider what is laid down on that
U subject,

subject, by the profound Italian politician * :

“ He who examines (he says) will find, that
 “ in all human affairs, it is impossible to put
 “ an end to one inconvenience, without
 “ giving rise to another.” This, however,
 ought not to extinguish, but only moderate
 the ardour for reformation: accordingly he
 adds, that we ought to aim at finding out,
 and when found out, embrace the arrange-
 ment that is subject to the lesser inconve-
 nience.

It always was, and especially now-a-days,
it is, the duty and interest of a statesman,
 without the spur of popular remonstrance
 or request, to survey all around him with
 the eye of revision; to be docile, not stub-
 born; alert, not lazy; inquisitive after the
 complaints of those under his care, anxious
 and active to relieve them.

He will, in all probability, commit a very
 dangerous error, if he refuse to do what is
 just and reasonable, on the supposition that
 he

* Machiavel, Disc. on Livy, i. 6.

he will be able much longer to govern the bulk of mankind by force or deception of any kind: for knowledge is communicated and diffused, now a-days, with a rapidity and effect unknown to ancient times; and has produced a great variation in the ideas of men of all descriptions, in every country which it has pervaded.

Of Revolution.

WRITTEN IN 1794.

ET TE TUA FATA DOCEBO.

VIRG.

THERE is one evident criterion as to the alteration of governments. Every government that does not secure its subjects in life, liberty, and property, and in a comfortable subsistence, if they be willing to work for it, ought to be regenerated, for the people are not the better of it: they could not be worse, though there were no government at all. But every government that does give such security, ought to be cherished by its subjects, and either never retouched at all, or if it ever be, with the utmost delicacy. Even though it should not give an absolute security in these respects, but only a considerable degree of it, still it is not the object of revolution, but amendment: for the former is a remedy so dangerous and desperate, that it ought never to be applied but in a disease that is equally so. This plain proposition marks
the

the distinction between the Continent and this Island.

No good has been done by the authors in this country who have endeavoured to diminish or disguise the sufferings of the French before the revolution; as the misrepresentation has a tendency to lead the people of this country to consider the proceedings of the French as a precedent for them. One of these authors admits some abuses in their finance; but the description he gives of their royalty, nobility, and clergy, is flattering and fallacious. The numerous and insufferable oppressions and insults to which that people and their most precious rights were exposed before the revolution, are fully detailed by Mr Young, in his *Tour through France*, in 1788-9; and several of them, though confessedly not all of them, by a moderate and very sensible aristocratical writer, Mounier, in his "*Recherches sur les causes qui ont empêchés la France d'être libre.*"

Such being their situation, the author of the *Mercure*, in 1790, though he was not violent,

violent, but moderate, and foresaw the calamities that would ensue, yet he exhorts his countrymen to persist, though they should suffer a hundred, nay a thousand times more than they had done; because nothing could be so horrible as what had been.

But the higher orders in this country have no resemblance to those that existed in France. No man, in this country, is insulted by king, noble, or priest; therefore, though the French were not deterred, and perhaps ought not to have been deterred, from a revolution by the probability of future disasters, yet we most certainly ought to be so.

That the people, in most of the other countries on the continent, are in as bad, indeed in a worse, condition than the French were, is generally agreed, and is asserted by the author referred to above. If so, similar convulsions are to be expected in all of them, and at no great distance of time. It was stated in a newspaper, about two years ago (October 1792) that it was reported there was to be a congress of Kings, or the Mini-

Ministers of Kings, somewhere in Flanders, for the purpose of fixing upon some principles and alterations of government agreeable to the people. The report has proved to be false, but the measure had been wise.

If a total overthrow of the ancient systems, in most countries on the Continent, is at all to be prevented, it can only be by its princes and priests moderating their desires, and the exercise of what they call their rights, and allowing to the bulk of mankind a degree of comfort and consideration which they have not hitherto there enjoyed; an obstinate and total opposition to reformation must prove fruitless and fatal. It may be struggled against for a while, and the contest may cost many lives and many tears; but the continental powers will find, and probably at no great distance of time, that Reformation is the only method to prevent, or long retard, Revolution.

They will keep up a great armed force: supposing them to be able to do so, which the immense debt they must have contracted by their wars renders very problematical;

cal* ; yet that very force will soon, instead of serving, counteract the purpose of its institution ; it will turn against those who raised it, because it must (on the Continent) consist almost entirely of the very men whose interest it is to reduce the new theory into practice, and whom their communication with the French (of late friendly and hostile) must have greatly enlightened : for, in the countries under consideration, men may be said to be divided into two classes, one that has a vast deal, and another that has nothing, or next to nothing. There exists not there that gradation which is to be found elsewhere. There is not a multitude of men of considerable property, a multitude of men of small property, a multitude of tenants, of rich merchants, of substantial tradesmen, which compose an aristocracy so numerous, as must be, if united, an overmatch for those whose all is—ability to work.

The

* Mirabeau, in one of his *Lettres to Manvillon*, p. 86, says, “ Je vous ai entendu dire une fois (et vous n’oubliez pas cette idée dans votre ouvrage) qu’il se prépare une grande et désastreuse révolution et celle où les rois obligés d’augmenter la solde de leur troupes qui autrement moureroient de faim ne pourroient plus les payer.”

The late King of Prussia, the late Emperor Joseph, and the late Empress of Russia, have each reformed the law of their respective countries by a new code of great merit. This was wise. I have not seen either that of the Emperor or Empress, but both are frequently referred to by Pastoret in his Treatise on Penal Laws.

Of the chief Promoters of Revolutions.

DEXTRA TENET CALAMUM STRICTUM TENET ALTERA FERRUM. OVID.

A CELEBRATED writer against the French Constitution ascribes the multitude of faults which he pretends to find in it, to a number of lawyers having been elected members of the Assembly which composed it; his opinion forsooth being, that lawyers everywhere, and especially in France, are incapable of any great exertion beyond the line of their profession, and particularly disqualified from arranging the constitution of a state.

A rash, groundless, and injurious proposition, repugnant both to reason and experience. It is obvious, that the profession of the Law requires a more than ordinary education, and no small share of acuteness, judgment, and penetration; qualities highly proper for political researches; and that the practice of it must, frequently, lead those who follow it to meditate on the government of their country, to perceive its defects,
and

and to investigate the remedies. This must have been peculiarly the case in France, from the nature of some of the courts there, which had long been in the practice of opposing, and, in some degree, controlling the arbitrary mandates of regal power. Many years ago, frequent and vigorous were the struggles of the French Parliaments against oppressive edicts of the king; and spirited and eloquent were the remonstrances which they spoke and published against them. It was some of them that made Lord Chesterfield perceive the approach of the Revolution near forty years before it arrived. What was Montesquieu?---A man of the law.

This writer talks with much contempt of the provincial Lawyers in that country. Did he consider what a province in France is? Petion was an advocate of Rennes.

But who were the chief promoters of the American Revolution, to which this author has found no fault?---the Lawyers; a fact of which he could not be ignorant, from his having been long Agent for the Colony of

New York, and during the period of his seemingly-patriotic opposition to the American War.

But there was another class of men that contributed fully as much to the Revolution,---men of no profession, no fortune, but of first-rate talents, and superior soaring genius. France, for half a century past, has possessed more men of that description than all the rest of Europe; owing, perhaps, to all ranks in the army and navy being appropriated to nobility, and to the offices in the law being venal. Thus excluded, they naturally became authors, both for subsistence and honour, and on political subjects, these being the most interesting, both to themselves and to the public. They considered themselves, and they in reality did form, a sort of body, *le parti qui enseigne*, the teaching or instructing party, as they expressed it. They devoted themselves entirely to the composition of books, calculated to rouse their countrymen to liberty; and encouraged, by the most pathetic exhortations, not only one another, but such men every where, to similar labours.

“ O men

“ O men of genius! (exclaims one of them,)
“ of whatever country you may be, behold
“ your lot,---misfortune, persecution, injus-
“ tice, the contempt of the court, the in-
“ difference of the people, the calumny of
“ those who are or think themselves your
“ rivals, indigence, exile, and perhaps even
“ an obscure death at the distance of five
“ hundred leagues from your country!
“ Behold what I announce to you; but
“ on that account must you renounce the
“ instruction of men? undoubtedly not;
“ and were you desirous of doing so, is it
“ in your power to subdue your genius,
“ and resist its rapid and terrible impulse?
“ Are you not formed to think, as the sun
“ is to shine? Have you not, like him, your
“ energy? Obey then the law which guides
“ you, and beware of deeming yourselves
“ unfortunate.”

The argument, however, does not seem to conclude that a man of genius should expose himself to all those evils in his lifetime; rather that he should commit them to writing, in order to be published after his death. Helvetius's book on Education was intentionally

tionally posthumous, he having been cruelly and unjustly persecuted during his life, for his *Treatise de l'Esprit*. In truth, he who follows the last method has most merit; for he can have no other motive than good will towards mankind, the other may an inferior.

Duclas, in his *Secret Memoirs of Louis XIV.* says, "No persecution, much indifference and neglect, is the death of all sects. Truth itself, constantly despised but not persecuted, will have but few partisans."

The last proposition, I apprehend, is erroneous. Truth may be long despised and may long have but few supporters; but in time it will prevail. I have seen several instances of this in my own time, and history affords a multitude.

De la Harpe (iv. 8.) has, in my judgment, with much more reason maintained as to Truth, that "she meditates in secret the happiness of mankind; she throws continually into the earth useful seeds, which, tho' often trodden under foot by the present generation,

“ generation, are, nevertheless, not choaked,
“ but ripen obscurely for futurity. The souls
“ of men, roused and agitated by her, have
“ tried all their force, and stretched all their
“ springs. The common object of all is the
“ human race. Let us be bold enough to
“ believe, that their efforts shall not be ab-
“ solutely barren, and let us not despair of
“ mankind.”

Of Parliamentary and Borough Reform.

MANY wise and salutary improvements on law, education, and several other articles of great moment, have been proposed long ago by some first-rate writers. These plans, however, have attracted the notice of but few in this country, though they would tend more to promote general good and domestic happiness, than any other reformation whatever.

It is the defect, or abuse, in the Parliamentary representation, which has, for many years, almost engrossed the attention of all ranks. It seems to lie in the command, which a few have obtained of the election of a very great number of the Members of the House of Commons, as stated in the Petition presented to that Body, 6 May 1793, by Mr Grey.

That

That command puts it in the power of a few to thwart the measures of Government, which must either yield to, or gain a majority of them, it cannot but chuse the latter alternative ; and the consequence is, to bestow on the few an influence which converts them into a sort of Oligarchy. This is productive of many evils, particularly of an opposition, not from conviction (which must be always highly useful,) but of one from ambition or interest, which has been frequently hurtful ; and of a distribution of offices, places, and pensions, different from what would be made but for that influence, and probably not so just to individuals or advantageous to the public.

Besides, the Constitution is not in *fact* what it pretends to be in *theory*. Now deception, when perceived, must excite general indignation ; unless itself, or something as bad, has introduced a general apathy or selfishness.

A late very judicious French aristocratical author (Mounier) gives his opinion upon this subject as follows : “ Those who have

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“ attentively considered the different springs
“ of the English Government, know that,
“ notwithstanding all the prerogatives of the
“ Crown, the King could not maintain or-
“ der and preserve his authority, if his
“ means of influence were in the least di-
“ minished, or the democratic power in the
“ least strengthened. It is well known, that
“ in Britain, the number of the representa-
“ tives of the people is very unequally
“ distributed; that insignificant boroughs,
“ which contain but a few inhabitants, have,
“ by usage, the right of deputing, while
“ very populous districts do not participate
“ of that right. That irregularity appears
“ to be contrary to several incontestible
“ principles: but it could not be rectified
“ without augmenting the force of the de-
“ mocratic part of the Government, with-
“ out endangering that equipoise which has
“ been so well preserved for near a century;
“ and if ever it shall be agreed to render
“ the representation more equal, it will be
“ indispensibly necessary to strengthen the
“ other two branches.”

This, perhaps, is all very solid; but it has
no

no tendency to support the present abuses. Let the crown, let the nobility have great influence; but let it be fair and open; not circuitous, corruptive, and flatly repugnant to the express dictates of the Constitution.

It appears to me, that it is the true interest of the King and his Ministers to shake off the Oligarchy, which, by perverting the Constitution, has possessed itself of so much influence in the elections; and that, it should seem, might easily be done: but whether any further alteration ought to be made, and if it ought, to what extent, is a very delicate and difficult question; so very much so, that it must require a very long and deliberate discussion, after which possibly it might appear that any further alteration is inexpedient or impracticable; a consideration that, among others, makes me very much surpris'd that our ministers should have adopted the very strong measure of refusing to listen to any proposal whatever upon the subject.

As to the Borough Reform, it ought, in
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order to give it real merit, to be carried much further than is proposed ; to an abolition of all corporations, for the reasons assigned by Mr Smith in his *Wealth of Nations*, and many other authors, who, I believe, have convinced all mankind, except the members of these corporations, of the justice and expediency of the alteration.

In a late litigation before me, between the Master Taylors of Edinburgh and their Journeymen, the latter declared, that they could afford, and were ready to make all the different articles of men's apparel, some a fourth, some a third, and some a half cheaper than the rate at which their masters charged : and they produced a printed paper and table, from which it appeared, that they had made the same offer in a similar law-suit before the Court of Session twenty years ago. Thus the country is heavily taxed to maintain an aristocracy of taylor. The case is the same with the other corporations ; but the Borough reformers have several times declared, and in some printed papers lately, that such abolition was no part of their plan.

Of

Of French Principles.

WHAT we call French Principles, were, by no means, first broached by the political writers of that nation.

In a French book, *Les Loifirs de Chevalier D'Eon*, I found a translation of an English pamphlet by Marchamont Needham, first printed in 1656, and reprinted in 1764, which contains them all. According to the translation (for I have not been able to procure a copy of the original) the title, which is long, imports "The excellence of a free state, or the true constitution of a Republic," &c. The purpose of it is to prove, that a *representative Democracy*, the members of which are freely and successively chosen by the People, is the best Government.

The French Constitution is, by no means, composed (as appears from what has been stated above) according to Rousseau's ideas.
The

The *Mercure de France* (3d July 1790) after relating that an artist of Paris had presented to the National Assembly a bust of Rousseau, with the *Social Contract* at his side, and giving a summary of the principles it contains, adds, and justly, “ If there exists a book, diametrically contrary to the principles of the French Constitution, it is surely the *Social Contract*. Were Rousseau to return to this world, he would be confounded at the homage he receives.”

But the French Constitution is framed, almost entirely, according to the ideas of the author of that pamphlet ; in which are to be found all the bold and brilliant arguments of the late celebrated writers and speakers in its favour*.

He

* Though all the principles and arguments of the French Philosophers are in this work, yet Republicanism was not able to keep its ground after Cromwell's death ; it probably will, now, in another country. The reason of the difference seems to be, that the Republicans, in the last century, did not act upon these generous and noble principles, but upon those of religious zeal and fanaticism, which being absurd, were turned into ridicule, and dispelled

He states fairly and forcibly, all the objections to his system, and answers them, particularly the common one, that such Government cannot be established without throwing

led by truth; but in these times that is not the principle. The French, however, by their excesses and outrages, have exposed their principles to much censure. It is curious enough, that the declaration of the Rights of Man, and a National Convention, were introduced even into Russia by the Empress Catharine before she effected her revolution. The Scotch Encyclopædia Britannica, *voce* Russia, says, "That in 1772, the people at large were in a state of indifference, out of which they were roused by the following means:—a little manuscript was handed about, containing principles of legislation for Russia, founded on natural rights, and on the claims of the different classes of people, which had been insensibly formed, and became so familiar as to appear natural. In that performance was proposed a convention of deputies from all the classes, and from every part of the empire, to converse, but without authority, on the subjects on which it treated, and to inform the senate of the result of their deliberations. *It passed for the work of her Majesty, and was much admired.*" It is added, "That in 1777, (that is four years after the revolution) the convention of deputies at last assembled in the capital; the Empress's book of instructions came forth, and some very great things were expected. The most consequential of the deputies were privately instructed to be very cautious, and informed, that carriages and guards were ready for Siberia. "There

ing the state into confusion, and putting all the citizens on a level. He says, If the expression, " putting on a level," be understood in the vulgar sense, it conveys an odious idea; as it would introduce a communion of goods, strip individuals of their property, and give all men a right to enjoy, without distinction, whatever they found would be convenient for them. " Such is " the scandalous object which our enemies " ascribe to a government depending on the " people, although in reality no form of administration is more directly against it; " but they think they cannot make it be hated too much. A Government, the whole " authority of which resides in supreme assemblies, composed of persons placed in it " by the free choice of the people, so far " from introducing a communion of goods, " hurtful to the generality, is the only one " that secures incontestibly to every individual,

" There was a grand procession at their presentation, each " had the honour of kissing her Majesty's hand, and receiving a gold medal. They met in form to recognise one " another, then parted, and have never met since."

“ dual, the peaceable enjoyment of what belongs to him.”

What do you mean by the people? is a very natural and proper question, in every such argument. This the author felt; but what he says upon it, is by no means satisfactory. He says, he has not in view, when he speaks of the people, “ a confused body, “ composed of all the individuals of the nation; nor those whom the law has bereaved of their privileges, in punishment of their crimes.” This is so far right; but why does he stop short at the negative? why does he not tell us positively what he understands by the people? That he has thought proper to avoid; and it is, no doubt, difficult, as is proved by the variation in the French constitutions on that point.

Mercier, in his book on Rousseau, is at great pains to inculcate a distinction between the *people* and the *populace*, and finds great fault with the aristocrats for always confounding them: by the first, he understands the enlightened part of the community; by the other, the unenlightend, of which

which he talks with very great contempt. But what criterion can ascertain who are enlightened, who not? nor can such distinction long subsist, if his advice in another book be followed, which is, that all should read; if they do, all must become enlightened, and the distinction vanish.

Rousseau, who, in his *Social Contract*, has said so much on the *general will*, ought to have said a great deal more; and have specified who they are, whose accumulated will is to compose the general one.---Are women of the number? This he has not touched upon. Aristotle excludes women and males under age, as being *imperfect citizens*; but if imperfection is to exclude, it will go to all men of full age, who, from ignorance or stupidity, are incapable of forming an opinion as to men and manners. The French are endeavouring to obviate this difficulty by a national education, and a political catechism: this may do a great deal, but still it seems impossible to prevent an aristocracy of *mind*, (which it is said the people are very desirous of doing) for all cannot have equal capacity and opportunity of reading and instruction,

struction, so that such an aristocracy must of necessity arise.

I have heard it said, that the occupation of the common people does not leave them time for instructing themselves by reading. But the new philosophic system proposes greatly to diminish the number of working hours. The author of the *Tour through the Theatre of the War in 1792-3*, says, That a member of the National Convention told him, “ I have made an exact calculation, “ and I find, that, four hours of work in a “ day, in our temperate climate, would suffice for the subsistence of a man and his “ family. Those that remain would afford “ him leisure for instruction and reflection; “ and it would then become impossible for “ such a man to be imposed upon by the “ cant of a few interested individuals, who “ assure them, that the nation has reached “ the highest pitch of prosperity; because “ they themselves have obtained every gratification of luxury that they can desire; “ but, to keep men ignorant, you must make “ them work; and, to make them work, you “ must keep them ignorant.”

This diminution of labour does not seem necessary in countries where they have one day in seven to themselves; that day, with an hour every evening, which they could easily spare, may suffice. The ignorance of the common people, hitherto, is not owing to want of time, but of taste, and the means of acquiring useful knowledge. Their spare time is generally thrown away in dissipation, or in reading that has no tendency to enable them to judge of the true interests of themselves and their country. Every government ought to provide some public innocent amusements for the people.

Mercier says, "The people always have proved, and always must prove, an inconstant and inhuman sovereign. We need only open history to be convinced of this." The observation as to the past is most just; but there seems reason for thinking, that the inconstancy and inhumanity alluded to, was owing to ignorance. Neither Athenians nor Romans could be sufficiently enlightened from the want of the art of printing. That invention renders it very easy, now a-days, to instruct all the people to a certain degree;
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to such a degree as to enable them to form a just judgment as to men and measures; and great pains ought to be bestowed to instruct them. It may be said, It is not for their interest to do so. This is a delicate question, which it is unnecessary to discuss; for, now a-days, it is impossible to prevent them from reading; and it is much better to place objects before them in a fair and full light, than in a false or improper one.

The translator of one of Brissot's pamphlets, asserts, in his preface, that such are the French principles, and such human nature, that every country must either adopt them with ardour and enthusiasm, or reject them with horror and indignation.

What their reception ought to be, to me seems to depend upon circumstances. If they be proposed in a country where there is an established government, under which the people feel themselves well, or tolerably well, they ought to be rejected; because, in such a country, they cannot be carried into execution without occasioning infinite confusion.

sion and calamity; but if they be proposed at the establishment of a new colony; or in a country, where, by some means or other, the former constitution has been totally dissolved, they ought to be received, not with ardour or enthusiasm, but with a candid hesitation; because they are apparently, tho' possibly, and, indeed probably, not in reality, much more for the honour and interest of mankind in general, than any system whatever that has been yet invented. For this reason, though I am as averse to their introduction into this island as any of its inhabitants, yet I confess I should have been sorry to have seen them expelled by force from France. Let them have fair play; let us see whether they will bear a calm as well as they have a storm. This, indeed, in the long-run, must be the interest of the established systems themselves; for, if these principles had been smothered in France by force, the bulk of mankind, to whom they are so fascinating, would have believed that they had not got a fair trial; and, of consequence, they must have, sooner or later, been rekindled over Europe, perhaps the globe. Whereas, if the French Republic fall

to pieces of itself, which it must infallibly do, if its principles be (as is alledged) chimerical and extravagant; the minds of men will be quieted; their impracticableness having been ascertained by experience.

Of the Trial of Louis XVI.

I HAVE read the impartial History of Louis the Sixteenth, by a Frenchman, of the law profession, called Jauffret, in eight volumes, printed at Paris in 1793. It seems very well to deserve the epithet it has assumed, as it contains all the speeches, and opinions, and a number of very well written pieces on both sides of that important case. All the members of the Convention agreed that he had betrayed the constitution, as they expressed it, encouraged the invasion of the Prussians, palsied the national force, &c. It however appeared to me, that, supposing all this to be true, he was excusable for the reasons assigned, by a member, whose piece is inserted in vol. V. chap. 86. His chief topics are, That the King was provoked, deceived, and made to believe that the Constitution was not, in reality, agreeable to the nation.

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The slaughter of the people on the tenth of August preceding seems to be what had the greatest influence against him. It was not, however, proved, that he had any accession to it; but the speakers, I find, take it for granted, and, on that account, consider his trial, not as a legal process, but a proceeding by way of attainder.

Various other facts are founded on by different speakers, of which there is no evidence produced, *e. g.* That he always kept in his pocket a copy of a dispensation from the Pope, absolving him from the oath he had taken to observe the Constitution. It was denied by the King, in his defence, that he had any accession to the slaughter in October; and he was so sensible himself of the weight of this accusation, that, after his counsel had finished, he rose, and made a solemn declaration that this charge was groundless.

Many of the speeches, and particularly those of Lalle and Brissot, who were for remitting his case to the Primary Assemblies, maintain, at great length, that all the foreign
AA powers

powers did, in reality, whatever they might pretend, desire his death; as they expected it would divide France, by raising up an anti-republican party, and lay a foundation for further massacres; which would render France horrible to all nations, and produce an universal coalition, either to exterminate its inhabitants, or bring them again under the yoke of despotism. "The fine protestations (said Brissot) of the English ministry, have remained in their port-folios, and not yet crossed the Channel. They feel the necessity of ruining the Constitution of the French, or the nation. In the opinion of the English, they feel they want us too atrocious, or at least a judgment that may seem so."

No person can easily believe that such was the conduct of our Ministry, whatever suspicions may be entertained as to other powers, who seem certainly to have very early formed a plan of conquering France, and dividing it among them. A very intelligent French Emigrant told me in Autumn 1793, that the death of the King had been purchased by a continental power. It is, however,
hardly

hardly credible that any monarch would purchase the execution of a brother king, even though the acquisition of territory had been the certain consequence, for it certainly was a terrible precedent. As to the want of force and anxiety in the style used in the representations of some sovereigns, of which Brissot takes notice, it is to be presumed they used a feeble, only for fear of irritating by a forcible, expression.

There is, however, one circumstance, which, if true, entirely weakens this favourable suggestion. The author of the Letters from France, printed in London in 1793, pointedly asserts, vol. IV. Letter 4. p. 144, *That the French offered to exchange the Queen of France for their Minister and the four deputies betrayed by Dumourier to the Austrians, and the proposal was rejected.*

I have, likewise, read a book entitled, *Le Pour et le Contre*: it is a complete collection of all the opinions delivered on this important trial; and of all the papers produced. The speeches are all very good, and some of them very eloquent. Petion, who

was against the King, laid great stress, as well as others, on the great expediency of putting him to death. The speech of Fauchet, who was for him, is extremely eloquent; he was not only a deputy, but a bishop. Several take notice of what ought to be the fate of the Dauphin; and give it as their opinion, that he should be educated as well as the young Egalité (the Duke of Orleans' son) at the national expence. Maivuel, in speaking on this subject, says, (vol. I. p. 353.) "Quel que soit son supplice, (*alluding to the King*) il n'y assistera pas; cet enfant encore n'a que sa naissance à expier; et je demande qu'à l'instant même, la République se chargeant de son education, lui fasse oublier les vices et les malheurs de sa naissance."

I think it is clearly established, from this report of the trial, that the King was guilty of the crime charged; that is, that he betrayed the Constitution, though he pretended to accept of it; encouraged the attack of the Prussians; prevented the national force from being exerted, &c. But still, certainly, in such a case, the opinions for the mildest punishment

nishment were the most just, not to say most prudent and political.

It may, with apparent plausibility, be said, that the regicide, and consequent massacres of the French, afford a strong argument against their principles. No doubt, if such events had taken place in France when left to itself, the argument would have been strong; but if (as there is reason to think) these calamities were occasioned by the interposition of foreign powers, or by their fraud or influence, the argument is very much weakened. Indeed such reasoning tends to prove the contrary; for, it certainly shews, that those powers who were foolish enough to interpose, must have been afraid, that the French, if left to themselves, would succeed in establishing their system. Besides, the bold, but impotent attempt of the coalesced powers, was most dangerous to royalty every where; as it tended to degrade and debase it in the eyes of mankind; and it must be noticed, that this was one of the chief political reasons urged by all those who voted for bringing Louis the Sixteenth to the scaffold; as is plainly spoken out by the famous

mous Robespierre, Sergent, and others, in giving their opinions on that momentous question.

Dr Moore, in his Letters from France, mentions, that judgment went against the King, in consequence of an artful state of the vote, which was as follows :—

“ I. Is Louis Capet, late King of France,
“ guilty of a conspiracy against liberty, and
“ of attempts against the general safety of
“ the state?—Yes, or No?”

“ II. Shall the judgment, to be pronoun-
“ ced on Louis, be submitted to the ratifi-
“ cation of the people in the primary as-
“ semblies?—Yes, or No?”

“ III. What punishment has he incur-
“ red?”

Several deputies, he says, voted against the appeal to the assemblies; believing the King would not be condemned to death; but had the question, as to the punishment, been brought on in the second place, they would have found that the appeal was the only method

thod of saving his life, and consequently would necessarily have voted for that measure.

Dr Moore mentions, that there was a great debate about the arrangement of the vote. They, no doubt, foreseeing the importance of having a proper state of it, would have a question, *First or second state of the vote?* which I have often seen put in the General Assembly of the Church of Scotland. For the manner of putting the question in a numerous Court must often be decisive of the cause, as I trust I have shewn sufficiently in the paper on that subject*.

There is a very just observation in the beginning of the speech of Merison, which, I hope, will be attended to by those who may think that there are any mistakes in the few reflections I have ventured to make on this truly important trial; his words are: " L'erreur est souvent utile pour mieux sentir la verité, c'est une ombre au tableau, il en faut pour en preciser les traits."

* See p. 6 of this Volume.

Monsieur DE LA FAYETTE.

IN the third part of a book, entituled, "The History of the Jockey Club," published at London in 1792, which gives a sketch of the characters of both the Queen of France and Monsieur de la Fayette, it is said, that letters were found in her cabinet, which prove Fayette's treachery, and that his feeble virtue was overcome by the Queen.

The French ought to publish the proofs on which they found his guilt; for a suspicion (which many entertain) that he has been accused from ignorance or injustice, must damp the spirit and ardour for Reformation every where, on account of the character and conduct of the man at a former period. Indeed, even his guilt, if proved, must have no small tendency to do so; for what man can convince the world that he will not be seduced by some temptation or other, if the illustrious Fayette has betrayed himself to a woman!

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It would seem, however, that the true cause of his defection was, his disgust at the shocking cruelties committed by the people. In a book, published in 1790, entitled, "L'Histoire de la Revolution, 1789, par deux amis de la liberté," there is inserted a confidential letter from d'Estaing to the Queen, in which he says, " Monsieur de la Fayette m'a juré " en route, et je le crois, que les atrocités " avoient fait de lui un royalist."

TURGOT.

HE was a great Minister, and a real Philosopher. He corrected a variety of abuses; and pointed at correcting many more, while he was in power; but, on that account, he was not allowed to remain in office above twenty months. The nobility, clergy, and financiers, insisted on his dismissal. Had he continued for any time, he would have done infinite service to France, without overturning the government.

To me, it appears, that evil predominates in this world, and must continue to do so while it lasts; but Turgot, according to his biographer, Condorcet, “ saw an evil physical and moral; nothing but the necessary consequence of the existence of beings endowed with sensibility, capable of reason, and of a limited capacity. The *perfectibility* with which several species, and, in particular,

“ ticular, the human are endowed, is a flow, “ but infallible remedy to the evils.” This is afterwards enlarged upon, and a hope and belief entertained, that mankind, in time, would become very much enlightened and progressive towards perfection.

I most heartily wish they may: but, to me, the passions seem invincible obstacles. I agree, that an absurd legislation, education, and religion, engender a number of passions that are not natural, and inflame those which are; but the natural passions are of themselves so strong, that it seems to be impossible, by any system, to subdue or restrain them, so as to prevent much mischief from arising from them in a short time. If it be, as has hitherto been supposed, one of the first maxims of legislation, *concubitu prohibere vago*, then the first thing to be done, in forming a political society, is, to pass a law, which is to be transgressed as soon as it is enacted, and to give rise to a variety of evils.

He finds fault (at least by implication) with crimes at common law; for he maintains, that the law ought to fix precisely what constitutes

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a crime;

a crime ; and what punishment ought to be inflicted, without leaving any thing to be determined by the Court, as to the qualification of actions, or the extent of punishment.

According to this doctrine, every perpetrator of a new crime must escape. This is not just or expedient. It may, however, be more expedient to submit to this evil, than to admit of crimes at common law ; as that, of course, confers an arbitrary power on criminal courts, both as to relevancy and punishment.

He requires that the criminal tribunal be composed of men, intelligent, and exempted from popular prejudices ; that its members be not perpetual, that is, I suppose, for life ; that the proof, against the person accused be printed, at the public expence, a certain time before the judgment.

This last, in very important, difficult, or political cases, would be a proper regulation. Our present forms and practice in Scotland, which do not admit of an adjournment in a
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criminal trial, afford strong reasons for dispensing with taking down the evidence in writing by the clerk from the dictation of the Court, for the fatigue, from the length of the *federal* run, was often insufferable; but I begin to think that we had better have an adjournment with a full and fair record of the evidence, and ample time to deliberate. It is too loose, in matters of such consequence, to trust to a short-hand writer, or to the notes of the Judge. The public opinion, if that were the case, might, no doubt, have weight, and it ought; it is much better that the public opinion should prevent a wrong judgment, than condemn it after it has been pronounced.

He is for allowing challenges without cause; (*non motivées*) and so must every man whose object in his regulations is to secure a fair trial.

Domestic virtues contribute most (he says) to the happiness of society. These have never existed; he says, in any society; because no nation has had good laws. He then gives a description of laws enacted hitherto. They have flattered, he asserts, the vices of humanity: been
made

made according to the will of the strongest; have functioned the despotism of men over women, fathers over children, masters over their servants, the rich over the poor, the great over the little; ("ou de la populace" "sur les citoyens") of the populace over the citizens.

He next supposes these laws abrogated, and their place supplied by those of nature and reason: laws with regard to marriage more agreeable to nature; dividing the succession equally among the children; granting liberty of commerce; abolishing privileges; imposing but one tax, &c.

He asserts (and a very important proposition it is) that bad laws are the source of bad manners; and (what is still more so,) that laws, founded on the nature of man and society, must be the same every where; and that political writers ought to employ their talents in simplifying and perfecting legislation; which, when accomplished, the people will be happy, whatever the form of government may be; that the subjects of a monarchy, if such laws took place, would be
much

much more happy than they are "under the most part of the constitutions which pretend to be republican." That, in countries, where no political liberty exists, most of the vexations arise from defects in legislation, not the privation of that liberty; that there is more reason to expect a good legislation under a monarchy, than under any other form; that he never knew a real republic; he held that form to be the best; that men would always grow better the more they were enlightened; that it was owing to their bad education, and oppression, that these truths had not been sooner discovered; and that the art of printing would perpetuate them, and be of infinite service.

He thought that luxury ought to be attacked by wise laws, tending to diminish estates; and not by sumptuary laws which are unjust, hurtful to industry, may be easily eluded; and, were they to be observed, would perpetuate wealth in families, and thus serve to maintain that inequality, the effects of which are more dangerous than luxury.

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This, however, would prove but a feeble attack upon luxury, which, according to his system, must, nevertheless, come to a very great height, as he is for encouraging commerce and circulation to the utmost.

It is true, that if the law of luxury were to be enforced, it would tend to diminish the consumption of luxury, and thereby to increase the accumulation of capital. But this would be a very partial and temporary improvement. The law of luxury would not touch the root of the evil, which is the love of gain. As long as this passion exists, men will continue to seek for new means of increasing their wealth, and luxury will continue to flourish. The law of luxury would only serve to increase the desire for more wealth, and thereby to increase the accumulation of capital. The law of luxury would not touch the root of the evil, which is the love of gain. As long as this passion exists, men will continue to seek for new means of increasing their wealth, and luxury will continue to flourish. The law of luxury would only serve to increase the desire for more wealth, and thereby to increase the accumulation of capital.

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This is the effect of the law of luxury, which is to increase the accumulation of capital, and thereby to increase the desire for more wealth, and thereby to increase the accumulation of capital.

Of the First French Constitution.

EVEN the first French Constitution, as established by the National Assembly, was beheld with no favourable eye by many in this country. Some, and these not the most unthinking, were apprehensive, that the political interest of Britain would suffer by the event.

If nations were equally enlightened as to government, religion, trade, &c. their prosperity and power would be as their local advantages: but arbitrary sway and priestcraft having possessed themselves of some of the finest countries in the globe, ignorance and misgovernment have deprived their inhabitants of the blessings intended them by nature; and enabled other nations, much less favoured by her, to make a figure beyond what they were entitled to from their comparative strength and situation. This will be found to have been the case

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with Great Britain, when compared with France; but the Revolution could not fail to awaken the latter to her true interests, and, by removing the oppression of her government, enable her to avail herself of all her local advantages, which being far superior to Britain's, the consequence that was dreaded would be, to oblige this country to hold a lower place in the scale of nations, than that which it had occupied for so great a length of time*.

It is evident, however, that this must have been the case in France without a revolution, if the reformation had only taken place, which the King himself proposed at the meeting of the Assembly of the Notables. Such variations in the fate of nations are inevitable in the natural course of things; and the country that suffers in consequence

* The dividing France into a number of small republics, would have been most for the political interest of Great Britain. It seems to have been the plan suggested by Brissot and others, called Girondists. It was also long before suggested by Helvetius. See his *Posthumous Treatise de L'Homme*, sect. 9, c. II. and IV.

sequence of them, ought either to submit to them with a good grace, or seek for new sources of power and commerce, if these cannot be dispensed with.

The French Revolution too, naturally offended the national pride of many in this country. We had long boasted of our liberty; long said and sung, "That none are so free as the Sons of the Waves;" and this the French have hitherto acknowledged: but when they came seriously to consider what would form the best constitution, they pretended to point out many imperfections and faults in ours; and framed one which professed to carry liberty much farther. Neither the critique, nor the contrast, could be agreeable to us.

But what, probably, gave the greatest offence was,—the abolition of all titles and rank.

The first revolution was accomplished without any bloodshed or punishment. It was the attempt to overthrow it that occasioned all the subsequent mischief.

It appears, however, Mirabeau thought that it had come on too soon*, and before

* This was likewise the opinion of the very judicious author of the *Mercur de France*, 17th July 1790; his words are,—
 “ Si les bons écrits ont été regardés dans tous les tems comme
 “ des bienfaits publics, ils sont encore plus précieux, lorsqu’ils
 “ paroissent dans un moment, où leur utilité devient plus
 “ prompte et plus immediate. Il importe à la Constitution
 “ naissante, et nous osons le dire, à la tranquillité publique, que
 “ de pareilles ouvrages, repandus dans toutes les classes suscep-
 “ tibles d’instruction, elevent le peuple au niveau de la Consti-
 “ tution qu’on lui a donnée; car il faut en convenir, cette
 “ Constitution, ouvrage en partie de l’opinion publique, se
 “ trouve à quelques egards, superieure aux lumieres actuelles
 “ de la plupart des citoyens, et sur tout aux habitudes du
 “ grand nombre. C’est un embarras plus qu’un danger; mais
 “ enfin si l’ancien Gouvernement a peü par le defavantage
 “ contraire, *et pour être resté trop en arriere de la nation*, il n’est
 “ pas moins à craindre que la Constitution nouvelle, ne soit
 “ genée quelque tems, dans sa marche, par la difficulté d’ele-
 “ ver sur le champ, à son niveau, les idees d’une multitude
 “ longs tems ignorante et avilie.”

The cause which this author assigns for the downfall of the French monarchy, “ pour être resté trop en arriere de la nation,” ought to be seriously considered by anti-reformers; as well as the following passage of another very sensible aristocratic author:—“ Lorsqu’on veut empêcher les horreurs d’une Revolution il faut la vouloir et la faire soimême. Elle doit être trop necessaire en France, pour n’être pas inevitable. Combien des Gouvernements en Europe y seront pris, pour n’y avoir pas plus songés que le cabinet de Versailles.” *Journal de Sabatier*, No. 10. p. 104.

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fore the people were ripe for it. In one of his letters to Mauillon, p. 471, he says, " Il est certain que la nation, n'est pas mu-
 " ré, l'excessive impéritie, l'epouvantable de-
 " fordre du gouvernement ont mis *en serre*
 " *chaude* la révolution. Elle a devancé notre
 " aptitude et notre instruction." Condorcet, in his posthumous works, says (p. 276) of France, " La mal adresse de son gouvern-e
 " ment a precipite cette Revolution *."

* According to Rousseau, in his famous Treatise on the Social Contract, " La souveraineté ne peut etre représentée
 " par la meme raison qu'elle ne peut etre aliénée, elle consiste
 " essentiellement dans la volonté generale, & la volonté ne se
 " represent point, elle est la meme, ou elle est autre, il ny a
 " pas de milieu. Les députés du peuple ne sont dont que ses
 " commissaires, ils ne peuvent rien conclurre definitivement.—
 " Toute loi que le peuple en *personne* n'a pas ratifié est nulle ;
 " ce n'est point une loi. Le peuple Anglois pense etre libre
 " il se trompe fort, il ne l'est que durant l'election des mem-
 " bres du Parlement : Sitot qu'ils sont élus, il est esclave, il
 " n'est rien. Dans les courts moments de sa liberté l'usage
 " qu'il en fait merite bien qu'il la perde." Mercier, in his book on Rousseau, laments, that the latter did not live to see the Revolution. It is indeed to be regretted that he did not live just to see it and then die; for, if he had lived longer, he would probably have suffered, as he would have joined the party who wished to divide France into small republics.

Of the French Decree of the 15 Dec. 1793.

It was alledged by many members of the French Convention, and by many others, that this decree had been proposed by men unfriendly to their new Constitution; and, therefore, desirous of pushing matters to extremity and extravagance, as the surest method of effectuating its destruction, and so I once inclined to think.

But, upon further consideration, I suspect that this is a mistake; for I find that Mercier, in his book on Rousseau, published in 1791, strongly recommends the measure. Now the ideas and plans of this author have almost all been adopted.

Besides, several of the speakers on the King's case, and particularly Paine, contend expressly, that it was necessary for France that revolutions should be universal, otherwise

wife she could not derive all the benefit from the revolution that was intended, but must continue to maintain armies and fleets as formerly; and Paine does, in delivering his opinion, expressly comprehend this country.

This decree was most injudicious and premature. The French seem to have supposed that all nations would catch the enthusiasm of liberty as soon as they promised them assistance; but they ought to have considered that some nations were not at all oppressed, some not so much as they, and none so enlightened (as they express it.) They ought, therefore, to have contented themselves with exhibiting the example of a Republic to other nations. Had they done so in peace, it probably would have been followed in time almost every where on the continent, though not in this country, on account of the constitution it already has.

But this decree is not the only measure by which they have done infinite harm to the cause which they meant to forward, and indeed

indeed to that of reformation in all other kingdoms. Had its most inveterate and cunning enemies, been to direct the French to measures the most hostile to their interests, they could not have dictated a series of proceedings better adapted to the purpose. By the burlesque appellations which they assumed, and the profusion of blood which they shed, they have rendered Democracy both ridiculous and hideous, and satisfied all thinking and impartial men, that like Death, it is more terrible when seen near than at a distance.

From their conduct, however, since the fall of Robespierre, there seems to be great reason to hope, that they will, in future, pay more regard to the principles of justice and humanity, and thus pave the way for peace and good will towards men being re-established on earth *.

Of

* Whether Robespierre and his accomplices have published any vindication of their sanguinary proceedings I do not know ; if they have, none of them have reached this country. The only apology for them I have met with, is an involuntary one that

Of the French War.

HELLA NULLUS HABITURA TRIUMPHOS.

LUCAN.

It appeared to me that this country had a manifest interest, and a clear title, to interpose

that has escaped Dumourier in his Memoirs, vol. II. p. 195. *Hamburgh* edit. 1794, he says, " Si on veut examiner avec sang froid la progression de cette revolution, on verra que la guillotine en activité est le mobile d'exaltation du patriotisme Français. Le spectacle de têtes coupées, de corps en lambeaux, promenés dans Paris et dans d'autres villes, a rempli les uns de terreur, et les autres d'une audace barbare; mais il a toujours conduit à un but décisif, c'est d'amener au même point les uns par la terreur, les autres par la nécessité d'assurer leur impunité, en multipliant les meurtres. *Mais enfin cette guillotine a aggloméré la nation en masse, et la met en état d'exécuter des choses étonnantes.*"

If so, the bloodshed may be excused upon the same principle that negro-slavery is.

According to the aristocratic author of a very artful pamphlet, entitled " Apologie des projets et de la conduite des chefs de la Revolution Française," p. 194.) the profusion of blood which the Revolution would cost, was foreseen and justified by the projectors of that Revolution before it was accomplished; he asserts, " Clement Tonnerre disoit avant la Revolution, " comme plusieurs de ceux qui y travailloient avec lui, qu'im-

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" porte

pose for the protection of Holland from the invasion of Dumourier, which seemed to be unprovoked and unjust. At the same time, the war, even to that extent, might, and ought to have been, either prevented altogether, or stopped after it had commenced, by negociation :---prevented, as the French would have agreed to abstain from making war on that country, if we would have agreed to abstain from making it on them : stopped, as the French, after they were repulsed from that country, would have agreed to confine themselves within their own territory.

But the invasive war against the French appeared to me inglorious and injudicious to the last degree. Inglorious, to attack a single nation with the coalesced armies of six powerful states ;--- Austrians, Prussians, Spaniards, Italians, Dutch, and British. It is human nature, in all contests, when an over match is perceived, to favour the weak side.

" porte qu'il perisse deux millions d'hommes pourvu que la France ait une bonne Constitution ;" and he finds great fault with the sentiment.

side. In the honourable war which this country waged with France, under the late Lord Chatham's administration, I panted for victory, and exulted when it was obtained; but in the American and French War the contest seemed so unequal and unfair, that I confess I never had the same anxiety to hear that our armies were successful, and I was astonished that ever a cannon was fired by way of triumph.

It appeared to me that this war was most injudicious; as by it, to us, nothing could be gained equal to the expence of men and money it would cost; and much, nay all, might be lost.

Nor could I see the least probability of success. What force the enthusiasm of liberty gives to a small number of men we had experienced in the American war! but the French, from their population, (agreed to be twenty-six millions) must, at least, have had five millions of men able to bear arms; a force twenty times greater than any that could be brought against them. Any aid that could be obtained by the cruel expedient

dient of kindling a civil war among them, was, I suspected, inconsiderable ; and, besides, that measure, by leading the royalists to discover themselves, would, if they were overpowered, prove conclusive against the re-establishment of monarchy, which the Allies had in view.

I could not approve of the mode of carrying on the war, in several respects ; particularly that of Starvation, as it was called.--- France had, no doubt, much more to fear from famine than force : but I had no notion that either humanity or warlike justice, sanctions an attempt to starve a whole nation indiscriminately. That, however, was our intention ; for we insisted with all the neutral nations, who had been in use to supply France with food, that they should desist from selling it to them : the consequence of which demand, if complied with, must have been the cruel death of royalist friends, as well as of republican foes ; of at least fifteen millions of old men, women, children, and sucking infants. If assassination be, as all men are agreed, very bad, starvation must be worse ; for the assassin
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can select, the starver cannot. I cannot allow myself to suppose, that the Ministers who advised that measure (who, as men, possess much generosity of temper) have attended to these sad consequences; or, if they did, they must not have expected that they would ensue.

They probably knew that the attempt would prove abortive, and made it merely *in terrorem*. I am happy to see, from a late order of Council, that it has been departed from; and (if the execution of it was really intended) I hope from repentance, not compulsion.

War, as practised by all modern and most ancient nations, has been the very reverse of a noble exertion; for they have always held it fair to bribe the Generals of the enemy's armies, and the Governors of his towns, to betray their trust, and to excite his subjects to rebellion, &c. If any individual were to behave in a duel, or any transaction, as his nation does in war, he would be universally detested and shunned; but the mode of carrying on this war against
France,

France, has been peculiarly ungenerous; even the forging their assignats has been stooped to by some of their enemies.

It appears very clear to me, that not only old men, women, and children, ought to be spared in war, but merchant ships too. On land, private property is respected, and public property only is seized. Why should a different rule obtain at sea? This idea has been ably and eloquently supported by Linget, in his *Annales Politiques*.

America.

America.

THE American Revolution was the first important one which, for ages, attracted the notice of all thinking men, and a mighty one it was. I thought, from the first, that, if that brave and virtuous people were successful, and a complete revolution took place, by means of which a proper republican government might be established, such an important event would have great effects over all the globe.

From the beginning of that disastrous war, it seemed to me that Britain would be foiled in the contest: I said so to many at the time; but a great majority of the people believed, or pretended to believe, the contrary.

The reasons for my forming such an opinion were,--the immense distance between the parent state and its colonies; the probable

bable interference of foreign powers, and, above all, the cause that the Americans were engaged in, which was such as to stimulate so great a country to make great exertions.

The infatuation of this country at that time was almost incredible. I remember, that one evening in the spring preceding the famous battle of Bunker's Hill, I supped with a friend, and found at his house, among others, a Colonel who had made a fortune in the East Indies, and was reckoned a very sensible man. He and I, in the course of conversation, got into a dispute about America; and, in the heat of argument, he offered to bet me L. 200, that America would be conquered without two hundred men being killed. In the summer, however, (no doubt much to the disappointment of this sanguine veteran) accounts were received of that memorable battle, which was the first, and it appeared from the Gazette, that we had one thousand men killed and wounded.

Carra, in a report which he made some years ago, proposed, that the French should attempt the emancipation of South America, and

and several other enterprises of importance to the globe, on the supposition, that the United States of America and Great Britain would league with France for the purpose of attaining so desirable an object. But America has thought proper to remain neutral; and Great Britain has exerted herself to the utmost to crush the spirit of liberty every where; nay, even made a great struggle to support Continental despotism and superstition.

It is impossible to say what good to mankind these three great Powers might have done, had such a league been formed on a solid basis*.

In 1774, the common people in America refused to pay taxes, and a civil war was almost the immediate consequence. The Americans, I am informed, are divided into political parties, such as are to be found

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* See, on this subject, Mirabeau's Confidential Letters, See Barlow's Advice to the Privileged Orders, Part II.

in most of the states of Europe; they are called Federalists and Anti-Federalists; the latter are for more frequent elections, against funding, &c. this some ascribe to the immense influx of emigrants.

It is impossible to say what good to mankind these three great Powers might have done had such a union been formed on a solid basis. It is not to be denied that in 1787 the common people in America resisted to pay taxes and a civil war was almost the immediate consequence. The Americans, I am informed, are divided into political parties, such as are to be found in

See, on this subject, Jefferson's Continental Letters. See Hamilton's Advice to the Privileged Classes, &c. &c.

of

Of Emigrants.

" It is very dangerous (says Machiavel) to
 " trust to those who have been banished
 " from their country: you may depend up-
 " on it, that, if they can get themselves re-
 " stored by any other means than yours,
 " they will desert you, and attach them-
 " selves to others, whatever they may have
 " engaged to perform to you. As to their
 " promises and hopes, they are fallacious;
 " for, so extreme is their desire to return
 " home, that they believe much which is
 " false, and add a great deal to it them-
 " selves. What they believe, and pretend
 " to believe, will fill you with vain expecta-
 " tions; but, if you proceed upon them,
 " you will incur expence to no purpose, and
 " embark in undertakings that will ruin
 " you."

Disc. on Livy, II. 31.

This author has been dead these twenty years ; but every person, not informed of that circumstance, would naturally suppose, on reading this, that he had written during the late American, or present French war.

Of the New French Calendar and Almanack.

THEY are more astronomical than ours, and have also their political object explained in the Preface to the Calendrier, which is very well written.

The Abbé Pluche, in his History of the Heavens, maintains, and, I believe with reason, that the Egyptian grotesque figures, for example, a Man with a dog's head, &c. were a sort of Almanacks indicating the time of the increase of the Nile, &c. As the French have now, in their Almanack, opposite to every day in the year, a plant, an animal, or an instrument of husbandry, it would, if engraved, resemble not a little an Egyptian Almanack. It is curious to observe how very ancient fashions and practices are revived.

They have but five holidays (fetês) in the year; that of Virtue, Genius, Labour, Opinion, Rewards. Every fourth year they are to have national games.

This

This is much better sense than creating holidays on account of events which please at the time. We have several that are very needless. Men, in appointing such, have not considered, that, if future generations were to proceed in that way, all the days in the year would, in process of time, become holidays.

Linget, in his *Annales Politiques*, II. 180. after approving very much of the abolition of several holidays which had recently taken place, maintains*, that no blame can attach to those who introduced a great number of holidays; their motive, he says, was humanity, not superstition; for, at that time, the common people were *Serfs, adscripti glebæ*, whose labour was entirely for the benefit of the master, who gave them little more than bare maintenance. It certainly was, therefore, humane to diminish the number of working days at that time; but now, that the common people are free, it is necessary to increase them, as they have, in general, even by industry, little enough to support themselves.

* In 1778.

ANACHARSIS CLOOTZ,
The Orator of the Human Race.

I DISCOVERED, on reading the *Mercure de France*, that the reason of calling Cloutz (who was guillotined in Spring 1794) the Orator of the Human Race, was the following singular incident:—At the sitting of the National Assembly, on the 19th June 1790, at which, nobility, arms, and liveries, were abolished, a body of men entered, composed, not only of some of all the nations in Europe, but of Arabians, Chaldeans, Gentoos, Turks, Moors, &c.

“ This Congress (the *Mercure* states*)
 “ announced itself to be empowered by all
 “ the strangers then residing at Paris. It
 “ spoke in name of the Universe (to tran-
 “ slate

* See No. 20.

“ flate literally) by the mouth of Mon-
 “ fleur de Clootz, of the Duchy of Cleves,
 “ and nephew of Monsieur de Paw, author
 “ of the Philosophical Researches. One
 “ Asiatic (it is said) paid a particular com-
 “ pliment; but as it was half French, half
 “ Arabic, it was only understood by the
 “ learned.”

Sabatier, in his Journal, asserts, that the Chaldean was an impostor: he says, “ One day a man, who mistook Liancourt for Biancourt, demanded from him money; on which the Duke answered, he knew nothing about him: He replied, “ I am the person who played the Chaldean.” *Madame, or la Citoyenne Rollande*, tells the same story; and also mentions, that Clootz supported the most extraordinary doctrines and theories, was suspected of being a secret enemy to the revolution, and considered as a person who instigated the French Assembly to extravagant measures, in order to make it appear ridiculous and disgusting. If this be really true, he most undoubtedly deserved his fate.

There

There certainly can be no doubt, that, in consequence of this assembly of people from so many different parts of the universe, the French principles have been disseminated over the globe.

PLATO's *Republic**.

PLATO is not a friend to what is called the Liberty of the Press, for he subjects poems to the controul of a licenser†; nor is he friendly to perfect toleration, for he is of opinion, that all Atheists should be imprisoned for five years, and put to death at the end of that period, if they be not then converted.

He

* His method of Dialogue is far from being pleasing. It occasions a most unnecessary waste of words, and a most disgusting flattery to the victorious disputant.

† Plato's severity to Poets proceeded, perhaps, from his attachment to Egyptian opinions. For we are informed by Dion Chrysostom, p. 156, edit. 1604, that that nation could not endure poetry.

The very unpoetical aspect of their country, may, perhaps, account for this singular taste of the Egyptians; for, even when fertilised by the Nile, it is inundated, and rendered just like a Dutch town; at other times it is quite burnt up from want of rain. (See a very good description of it in Volney's Travels, Vol. I. c. 18.)

He thinks that all citizens should be divided into four classes; to the first, he allots as much property as is sufficient to put them above poverty; to the second, double; to the third, triple; and to the fourth, quadruple; but what the last class have above that, is to go to the State. Paine's system seems to be somewhat similar to the last idea suggested by Plato; for he holds, that all estates, above L. 10,000 a-year, ought to be taxed to the full value.

There are many just observations, and noble maxims in this work of Plato; particularly as to the necessity of attending to education, and the evil consequences of exorbitant wealth.

Of the Liberty of the Press.

MERCIER, in one of his books*, gives the picture of a man wearing a mask, as a punishment for having written a bad book, (un mauvais livre) “ quand je dis mauvais, (he adds) Je ne parle pas des defauts de “ style ou d’esprit : Nous difons seulement “ qu’il a mis au jour des principes dange- “ reux, opposés a la saine morale, a cette “ morale universelle qui parle a tous les “ cœurs †.”

In the very same chapter, however, he asserts, that the Liberty of the Press is the standard of civil liberty. Now, what man
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* See L’an deux Mille quatre cent quarante, Vol. I. c. x. p. 50, edit. 1787.

† “ When I say bad, I do not speak as to the style or “ spirit ; I mean only dangerous principles, inconsistent “ with sound morality, which speaks to all hearts.”

in his senses would run the risk of publishing his thoughts, if the law of the Press were conceived in such vague terms, if he could be accused of, and punished for supporting what might be considered to be dangerous principles, or inconsistent with universal morality*? This author, before delivering a sentiment so repugnant to the Liberty of the Press, ought, at least, to have given us an example, or two, of what he conceived to be dangerous principles; but this he has not ventured to do, perhaps wisely.

Indeed he himself maintains, in this very book, a doctrine, which, according to his notions of the Press, ought to subject him to punishment; he contends for the liberty of divorce; and asserts, that it was allowed among Christians till the ninth century, when it was abolished by Pope Nicholas.--- Now, many will be of opinion, that this doctrine is both dangerous and immoral.

My

* As to what is Universal Morality, see Montaigne, II. 12.

My ideas on this subject are shortly these: I think, that punishment, or censure, ought to be inflicted on an author only when the publication is intended to calumniate or abuse private individuals; and that all general doctrines upon public affairs, or speculative subjects, ought to be allowed to undergo an universal and unlimited discussion. This is certainly a plain and simple rule to go by, and it is likewise just, as it is a publication of the first kind only that can proceed from malice.

Of Labour.

THERE was, in many parts of Scotland, a great scarcity of coal, in the year 1793. Williams, in his Mineral Kingdom, (published in 1789,) founded the alarm to no purpose.

This author maintains, that the exportation of coals ought to be checked; because, he says, the coal mines are exhausted in many places. He asserts, that, at Newcastle, near the sea, they are wrought at a very great depth; and that coals are brought for exportation, even from places twenty miles up the country, by waggon ways*.

Monfieur de Paw, in his Rech. Phil. sur les Grecs, vol. I. sect. 8. *in finé*, makes this remarkable

* Vol. I. p. 158. et seq.

markable observation :—" Deja on com-
 " mence a prevoir les revolutions qui chan-
 " geront toute la face du monde politique,
 " des que les mines de charbon et les tour-
 " bieres seront epuisee. Alors plusieurs
 " villes tomberont en ruine : plusieurs con-
 " trées se depeupleront et on fera meme
 " obligé d'en abandonner quelques unes
 " aux betes sauvages, pour se procurer des
 " forets."

The coaliers have been much blamed for their great inclination to idleness; but the manner in which they work the mine is so very disagreeable, that it is not surprising they should be averse to keep constantly at it. It is certainly the mode of working coal that creates a scarcity of coaliers, and this scarcity is one of the causes of the want of coal. A very intelligent coal-master told me, that a coalier was not reckoned a creditable employment; so much so, that a girl, not a coalier, was not fond of marrying a man bred to that profession, and preferred any other tradesman, even with less money. What likewise proves their dislike to the work is, their strong inclination to inlist;

enlist; several Colliers were known to have gone into the army, who earned twenty-five or thirty shillings a-week.

All this shews, that the obliging men, to follow the profession of their fathers, or dividing them into casts, to each of which a particular department in society is assigned, has its advantages.

By doing so, the community is certain of having all the different kinds of work performed; some of which, though absolutely necessary, are really very disgusting, and, perhaps, somewhat distressing to the work-people. When society is so much improved and refined, that high wages can be earned for work which is not disagreeable, dangerous, or degrading, a difficulty must often arise of getting men to enter, or persist in that which is, perhaps, both unpleasant, contemptuous, and perilous.

In consequence of this, higher wages must, in time, be given, to induce people to accept of such employments; so high, indeed, as probably to exclude the poor from purchasing

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finding the commodity, which, if it be a necessary of life, must be a very great calamity. And the misery is, that even high wages will not always procure hands; for, such is the nature of man, that he will, frequently from pride, prefer a less profitable employment, which is creditable, to one that is more lucrative, if not so.

This being the case, it would seem wise, just, and expedient, to take some proper and prudent measures to encourage people to follow such professions, when they are essential and useful to society, by certain privileges, immunities, or some sort of premium; otherwise, the inevitable consequence must be, that either a total, or partial stoppage, must sometimes occur.

These observations have, hitherto, been confined chiefly to Colliers. It, however, merits consideration, whether it be not expedient, in all great manufactories, that those who employ a vast number of men, women, and children, in occupations which soon subject their bodies to debility or disease, and thus occasion a great number of poor, ought them-

themselves to pay the whole expence of maintaining them, or, at least a very great proportion of it ?

According to my information, the coal-masters of Scotland have always maintained their poor. Why should not the proprietors of cotton-mills, iron-works, and other great manufactories, do the same ?

Helvetius maintains, that all men may be equally happy, or nearly so, notwithstanding the great inequality of conditions ;---that all are so, when satisfying the natural desires of hunger, sleep, &c. which occupy often ten, or twelve hours, of the twenty-four ; that the degree of happiness or misery, depends on the employment of the remaining ten or twelve hours, which constitutes the difference between a rising and satisfied desire ; that labour is an agreeable occupation, if it be not excessive ; and that, therefore, the poor man has an advantage in this respect over the rich, whose intervals (from his having nothing to do) are filled up with *ennui*, that is, the uneasiness which the mind feels from want of employment ;

ment or, as Dr Johnson expresses it, " the horrors of vacuity."

This idea seems certainly just, though new; he ought, however, to have added an exception as to labour which is truly disagreeable and unwholesome, not to say degrading. There is one pleasing reflection, which arises from the thought, that it will probably convince the bulk of mankind, that they must be very much mistaken, if they envy the rich, or foolishly suppose, that Happiness is as unequally distributed in this world as Riches.

Of the Highlands of Scotland.

I HAVE often heard, that the substitution of sheep, in place of cattle, in the Highlands of Scotland, tends much to diminish the population there. In order to ascertain how the fact stood, I asked a Gentleman, well acquainted with this part of the country, and who has presided over the Board of Agriculture, whether this was really the case? He said it was a mistake; for, as sheep, by their wool, afford materials for manufactures, consequently, if proper use were made of their fleece, the late introduction of sheep farms, far from diminishing, would be the means of increasing population. The inference, from what he stated, seems to be, that the substitution of sheep for cattle would certainly depopulate; but that, if woollen manufactures were established in that part of the kingdom, the people, driven from the country from want of work, in consequence of such substitution, would, as manufacturers,

ners, be removed to, and multiplied in towns. Altho' these were the sentiments of this official Gentleman, yet I found, in a conversation I afterwards had on the subject with another intelligent person from that part of the country, that he was of a very different opinion. He maintained, that the idea of establishing a woollen manufactory there was chimerical; and that the introduction of sheep-farms into the Highlands would be the means of depopulating the country very much; for that no such manufacture ever had been, or could be, established, as this part of the country was not proper for it. He agreed with me too, in thinking, that the diminishing the population of the Highlands was a very great loss to the country; as, in this way, one of our chief nurseries for men in the time of danger, would be very much weakened; and that for this, as well as for other good reasons, Government ought to have been at expence in preserving such a hardy, and truly war-like race of men; and, on that account, have made an allowance to those on whose estates they were born and bred, and who now, from pecuniary motives probably, found it convenient to adopt this
new

new mode of farming. No very considerable sum, it is believed, would have been sufficient to indemnify these gentlemen, and it would certainly have been very well bestowed; for it should always, with pleasure, be remembered who fought our battles in Lord Chatham's honourable wars—it was the Highlanders, as he himself boasted in his usual eloquent manner, in the House of Commons.

Thoughts on the Right of Patronage.

WRITTEN IN 1766.

Toi qu'un injuste orgueil condamne à la bassesse
 Toi qui, nè sans ayeux & vivant sans mollesse,
 Portes seul dans l'état le fardeau de la loi
 Et fers par tes travaux la patrie & ton roi
 D'utiles citoyens respectable assemblée
 Que dedaignent les cours, mais qu'estime le Sage ;
 Peuple j'ose braver cet insolent mépris :
 D'autres flattent les grands ; c'est à toi que j'écris.
 ————— Epitre au peuple par Thomas.

It is proposed, in the following pages, to consider the Right of Patronage as at present established and exercised in Scotland, entirely in a prudential and political point of view; and to inquire, with impartiality, freedom, and temper, whether it be consistent with the interest of the country, the crown, and the clergy?

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All men, without exception, are subject to a variety of distresses; *the many* who are *poor* suffer much more than *the few* who are *rich*; hard labour and want having fallen to their lot, and therefore they have peculiar temptations to murmur, and repine at the condition of humanity.

Such being the situation of men, it is natural for all to listen with attention and eagerness to religion, which promises them, on certain conditions, endless felicity in a future state: but, generally speaking, religion meets with a much better reception from the poor than from the rich. The poor are attached to it cordially, and no wonder, as nothing can have a greater tendency to soothe and solace those who stoop under the pressure of fatigue, penury, perhaps oppression, than assurances that, in another world, a very different distribution of things will take place. But the rich, too frequently from dislike to the conditions, or disbelief of the doctrines of religion, do not rank themselves among its votaries. It would be needless to enlarge more upon this difference between the rich and the poor, as its reality

cannot be disputed either by the men of the world or by the religious : not by the former, because daily experience displays it ; not by the latter, because numberless texts of Scripture prove it. The reader will be pleased to mark well this difference, because it is the basis on which great part of the following argument will be rested.

On considering attentively what has been hinted, it will be obvious that religion ought to be reckoned an object of great consequence to those who have the government of mankind: for, as the impressions that it makes are most forcible and powerful, if the people whom it actuates take a wrong turn, the state may be endangered or overthrown ; whereas society may reap much benefit from it, when properly directed. For it reconciles the bulk of mankind to the inequality and hardships to which they are subjected from the imperfection of political institutions, it has a good effect upon their morals, and supplies the defects of human laws. This has been denied by some ingenious and impious authors ; but a very slight observation of mankind will refute them. Of what prodigious use

use to Society is one single effect of religion, viz. the sacred regard for an oath? without which it is evident, that Justice would often be disappointed, both in civil and criminal cases, for experience shews, that people will deliberately and judicially aver falsehoods, to which however they will not swear.

What has been suggested, with what will occur to the reader*, must, it is thought, evince, that the end which a statesman should aim at in countenancing religion, and appointing a set of men to explain and inculcate its doctrines, is *the comfort and instruction of the common people.*

It is not material to inquire whether the right of patronage owes its birth to the usurpation of laymen, or to the policy of priests, in order to encourage the erection and endowment of churches. He who built or endow-

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* "Il ne faut pas toujours tellement épuiser un sujet qu'on ne laisse rien à faire au Lecteur. Il ne s'agit pas de faire lire, mais de faire penser." De l'esprit des loix, vol. II. liv. xi. c. 20.

ed a church must have done so from a pious intention, and therefore there could be no danger in allowing him to name the person that officiates in it; because it never could happen that the religious donor would counteract, by the settlement of a minister, the end he must have had in view in erecting a church. But then such privilege should have been personal, not transferable: for it is apparent, that as soon as it was allowed to descend to heirs by succession, or to be transferred by voluntary or legal alienation, it might come into the hands of persons who, being destitute of the piety of the original founder, would have no other object but the provision of a friend or dependent; and, in fact, that such is the end which patrons commonly have in view, is indisputable. At the same time, it merits particular observation, that, in countries, where a religion prevails, in which there is a hierarchy, much external show and ceremony, and, above all, particular forms almost on every occasion, the right of patronage never can be so abused, nor consequently become so great a grievance, as in this country, the religion of which admits of no hierarchy, little or no show and cere-

ceremony, and no forms whatever. In Popish countries, and even in England, the sermon is the most inconsiderable part of the service; in Scotland it is the chief. In Popish countries, and even in England, the clergyman has his duty prescribed to him by forms, according to which he must pray, marry, baptise, &c. In Scotland he is confined by no form, consequently much more depends upon his personal abilities, and therefore there is infinitely more room for a *delectus personae* in this country, where Presbytery is established, than in the countries where Popery or Episcopacy prevails.

Accordingly the Presbyterian religion, and all the ecclesiastical forms and steps of procedure in settling a minister, observed at this day, plainly suppose that the minister to be settled is the choice of the people in the parish for whose benefit he is intended.--- These forms, though quite inconsistent with the present method of settlement, in virtue of presentations from patrons, are still kept up and gone through on every occasion: particularly a call must be moderated, (as the phrase is) and sustained before the settle-

settlement can proceed*, though, perhaps, subscribed only by the exciseman of the parish, or the patron's factor or gardener; while, at the same time, all the people in the parish, high and low, rich and poor, heritors, elders, and heads of families, may have to a man entered their disapprobation, and dissent. That a paper subscribed by an exciseman, the patron's factor, or even by two or three heritors, perhaps non-residents, should be called a Call, when all the residing heritors, elders,

* The style of a Call runs as follows:—"We the heritors, elders, and magistrates, of the town-council of _____ (if to a burgh) being destitute of a fixed pastor, and being most assured by good information, and *our own experience* of the *ministerial abilities*, piety, literature, and prudence, as also of the *suitableness to our capacities* of the gifts of you Mr A. B. preacher of the gospel, or minister, at C. have agreed, *with the advice and consent of the parishioners* foresaid, and concurrence of the Reverend Presbytery of D. to invite, call, and entreat; likeas, we, by these presents, do heartily invite, call, and entreat you, to undertake the office of a pastor among us, and the charge of our souls: And further, upon your accepting of this our call, promise you all dutiful respect, encouragement, and obedience, &c." See Stewart's Collections, Tit. 1. where also the other steps of procedure are set forth.

elders, and heads of families, have declared their aversion and dislike to the presentee, is a strange abuse of language, and to find it a Call, and sustain it as such, is surely a great abuse of judicial power.

It is plain, therefore, to common sense, that the right of patronage is incompatible with the Presbyterian religion. One of them must yield, for by endeavouring to keep up both, we run into much absurdity, contradiction, and indecency.

From what has been argued, it seems to follow, that the end of settling a minister in a parish, which is the comfort and instruction of the common people, cannot be attained, if an unlimited exercise of the right of patronage be allowed: because, for the most part, patrons will not have that in view, but the provision of a friend or dependent. In fact, it is found that the present method of settlement does by no means answer the end. If a late calculation be right*, 120,000
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* This Paper was published in 1766.

of the people of this country have left the established church; and, it cannot be denied,, chiefly on account of patronage. A Presbytery of Relief, (as it is justly called,) has made its appearance, and carries off vast numbers even of our more moderate people, because it differs only from the established church as to patronage.

Every time the right of patronage is improperly exercised, it is certain that more of the people of this country will take refuge with that presbytery, which threatens to be the most formidable enemy that the established church ever saw, as it must very soon ingross a great majority of all the serious people of Scotland.

It has been often said by the advocates for patronage, that the Seceders would in time lose their ground, and our people tire of leaving the established church.

But it was never reasonable to expect this, since patronage is absolutely inconsistent with the Presbyterian religion. Those commonly called Seceders have split among themselves,
yet

yet there is no reason for saying they have lost ground ; and now that a Presbytery of Relief has been tolerated, which differs from the established church in nothing but in this single point, there is no doubt that the defection will grow stronger and stronger every day, as patronage is inconsistent with the Presbyterian Religion, and as the common people of this country are much attached to that religion.

There is no arguing against the fact, that, within these two or three years, so far from tiring of leaving the established church, the people in this country have been quitting it in great numbers, and must continue to do so, unless causes shall fail to produce their usual effects.

It has been often urged by the advocates for Patronage, that, if the church bestowed proper care and attention in licensing and ordaining young men, there could be no room for complaint ; as, then, it would not be in the power of a patron to abuse his right by presenting an improper person.--- But it is obvious, that those who can se-

riously use, or be much influenced by this argument, have very little knowledge of the world, as it is evident that, in every profession which is numerous, many, though not properly qualified, must be admitted. No man would chuse to trust his cause to every advocate, or his life to every physician, that has been admitted into the Faculty; and it is not reasonable to expect more perfection in this respect in divinity, than in law or physic: besides, it ought to be observed, that different parishes require different pastors; so that a patron may abuse his right by presenting a person very well qualified for one place, to another in different circumstances.

*Fraxinus in sylvis pulcherrima, pinus in hortis,
Populus in fluviiis, abies in montibus altis.*

It also ought to be attended to, that, though the right of patronage must always be odious to presbyterians, yet it has been rendered more so of late, by the great change in the style, manners, sentiments, and sermons of the clergy. They are, no doubt, now more learned, more philosophical,

lophilic, and more celebrated in the republic of letters, than they were half a century ago; but it does not therefore follow, that they will give more comfort and instruction to the common people. The consequence naturally to be expected from the alteration was, that they would not be inclined to preach on subjects agreeable to the people, in a style suitable to their capacities, nor conform themselves to that strictness and austerity of life which the notions of the common people exact. Accordingly, this is just what has happened; and, on that account, most of the younger clergy have been peculiarly disagreeable to the people for some time past, and most of the *violent settlements*, as they are properly called, have been owing to the right of patronage being exercised in favour of clergymen of that description. At the same time, these young gentlemen, imagining that they were unable to gain the good graces of the people, and that they would never obtain benefices, if the choice of their ministers should be left to them, have exerted themselves to the utmost in support of Patronage, and raised an outcry against the people

ple as extravagant as it is unreasonable.--- This, for a considerable time, made a great impression on many of the landed interest, as well as on most of the ruling elders who attend the General Assembly; and therefore they, for some time, threw their weight into the scale against the people. However, it is believed, that the greatest part of these respectable gentlemen have at length been undeceived; at least, as to the ruling elders, it is a certain fact, that the decisions* of the Assembly 1764, in favour of patrons, were carried by a majority of ministers against the ruling elders. Nor have the younger clergy stopped here, but they have carried their zeal for Patronage to such a height, as to persecute some of their brethren, who, from a principle of conscience, would not concur with them in enforcing presentations.

The conclusion from what has been stated, is, that religion is of advantage to the state; that the end of settling ministers in parishes is the comfort and instruction

* In the cases of the Parishes of Shots and Glasgow.

tion of the common people ; that this, so far from being accomplished, has, on the contrary, been frustrated by an improper exercise of the right of patronage ; that this has obliged great numbers of the people to abandon the established church, and will, in time, withdraw from it all those who have any regard for religion ; which, it is apparent, must be attended with very disagreeable effects. This leads to the consideration of the right of patronage, in so far as the interest of the country, the crown, and the clergy is concerned.

As to the Country, what advantage arises to it from the right of patronage, is not very obvious ; but the disadvantage and loss which it occasions is striking.

It is palpably a great loss to the country to be burdened with the charge of an additional church and minister in every parish ; which, in all probability, it soon will be, as there are already two churches and two ministers in many parts of the country. The maintenance of an additional church and minister in a parish, runs the tenants

nants and labouring poor into an expence which they are not well able to bear. Accordingly both they and the landholders feel it; it therefore has become not uncommon, in buying estates, to inquire, whether the tenants are Seceders, or attend the established church.

This expence must, for the most part, ultimately fall upon the landed interest; and it seems to be plain, that nothing but the greatest infatuation, or imposition, can induce them to support patronage by their influence. The right of patronage belongs to an inconsiderable number of landed gentlemen; it is chiefly vested in the Crown and royal boroughs: what pleasure then can the landed interest take in seeing their tenants and servants exhausted by such unnecessary expence, in consequence of a regulation which gives them no additional power, authority, or any advantage whatever; but, on the contrary, makes them perfectly insignificant, and mere cyphers in a matter in which they certainly should have a great deal to say?

It

It may, perhaps, be observed, that many of the landed gentlemen are very indifferent for their own part what ministers are settled: if so, they should never thwart the inclinations of the common people, but endeavour to give them a minister as agreeable as possible; because then they will promote the end of his settlement, *viz.* the advancement of religion, which is both for their interest and that of the country in general, on account of its good effects: for, if the established clergy are of no use in promoting that end, it seems to be indisputable, that the money laid out in maintaining them is thrown away.

But if the true object in settling a minister in a parish be neglected, and the subsistence of a presentee, though altogether useless, be regarded as the only end of a settlement; why should not the landed gentlemen have votes in the appointment of ministers, as well as in that of schoolmasters and collectors of the cefs? Is not the stipend of all these officers in reality paid by a land-tax out of their estates?

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The right of patronage, as at present exercised, has a still worse effect; because it has a manifest tendency to bring religion into contempt with the common people. What can be more shockingly absurd than to see a minister of the gospel settled by a troop of dragoons? What more disgusting than to see a minister of the gospel, though disregarded and despised by every person in the parish, sit down contented, because, nevertheless, he enjoys the manse, the glebe, and the stipend.

—— *Populus me sibilat, at mihi plaudo,
Ipse domi nummos simul ac contemtor in arca.*

The common people are too sensible not to discover, that the object which patrons, and others in power, have, is not the advancement of religion, nor the comfort and instruction of the people, but the subsistence of a friend or dependent; and that what the intruding pastor has in view, is not to tend the flock, but to shear the golden fleece. This certainly should be concealed (at least from the people) as much as possible; for, if once they perceive it, there is some
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risk that they may become disgusted at religion, and conclude with an impious Italian, who, after being informed of the smallness of our stipends, and comparing them with the great benefices and dignities which the Romish clergy enjoy, expressed himself to this purpose,—“ *The Church of Rome is a great cheat,---the Church of Scotland a little cheat.*”

The only advantage which, it is pretended, results from the right of patronage, is peace and quiet. This might have been alledged; perhaps, with some plausibility, when patronage was at first revived; but it is astonishing it should be still dwelt upon, now that we have had the experience of it for a number of years, during which we have been continually harrassed with disturbances, divisions, and schisms.

It may possibly be true, that, in royal boroughs, where politics and party-rage prevail, before settlements took place much solicitation and altercation would happen; but does that afford any argument against allowing a free choice to the people in general? It might as well be contended, that the

House of Commons should be abolished, because elections in burghs often give rise to much drunkenness, corruption, and perjury. The best things may be abused.

But the allegation, that the election of ministers by the people would occasion disturbance, is redargued by observation and experience. There are, it seems, one hundred and twenty schismatic ministers just now in Scotland, none of whom are settled by presentations, but upon a call or election by the different people who have withdrawn from the established church; yet we never heard of dissention, not to say disturbance, among them at these elections. And though they should differ sometimes, and come to a vote, yet that would not produce any division, or even a law-suit: for mankind are sensible, that when a number of people are not agreed, the dispute must be ended by putting the question, and those who are outnumbered cheerfully submit. Those called Seceders have indeed split among themselves on points of faith, and have had two or three law-suits before the Court of Session, about the property of churches and ministers houses, which they

they had built when united ; but when had they any disturbance or law-suit about the election of a minister ?

There are many churches on the establishment not subject to patronage, and they have been planted for ages without any disturbance. In North Leith, the right of electing the minister is, and has been, vested in the neighbours and inhabitants for two centuries; and yet it is a fact, that, during that very long period, they have never had any dispute or difference among themselves about supplying a vacancy. Many other instances to the same purpose might be mentioned, but it is unnecessary, as the fact is as notorious as it is strong, and therefore the cry against the turbulence and unreasonableness of the people is a very great misrepresentation.

Before concluding this branch of the argument, it will not be improper to take notice of another topic on which those gentlemen have insisted much, viz. that the people, or rather, as they are commonly called in derision, the Christian People; have no sort of right to chuse their ministers, and that the notions they enter-

tain to the contrary, have been instilled into them by clergymen over-zealous for religion, or over-anxious for popularity.

To this it is answered, that, as the end of settling a minister in a parish evidently ought to be the comfort and instruction of the people, it is extremely just and natural for them to infer that they have a right to elect him.

It is likewise very wrong to blame any of their ministers for instilling this notion into them. It is the Presbyterian religion which gives rise to it, and every step of ecclesiastical form and procedure in the settlement of a minister, must confirm them in it.

Besides, the gentlemen who lay so much stress upon this topic would do well to consider, whether or not the revival of patronage, by the Act 12^{mo} *Annæ*, be consistent with one of the two essential and unalterable articles of the Union? By the Scottish act for a treaty of union, 1705. c. 4. it is, “ provided also that the said commissioner shall not treat of or concerning any alteration
“ of

“ of the worship, discipline, and government
 “ of the church of this kingdom, as *now* by
 “ law established.” An act immediately be-
 fore the Union, 1706, c. 6. after narrating
 that the treaty had been reported to Parlia-
 ment, and that it was “ reasonable, and ne-
 cessary, that the true Protestant Religion,
 “ as presently professed within this king-
 “ dom, with the worship, discipline, and go-
 “ vernment of this church, should be effec-
 “ tually, and unalterably secured,” does
 “ establish and confirm the said true Prote-
 “ stant Religion, and the worship, discipline,
 “ and government of this Church, to conti-
 “ nue, *without any alteration*, to the people
 “ of this land, through all succeeding gene-
 “ rations.” And immediately after the Union,
 another act passed to the same purpose; and
 it further statutes and ordains, “ That this
 “ Act of Parliament, with the establishment
 “ therein contained, shall be held and observ-
 “ ed in all time coming, as a fundamental
 “ and essential condition of any treaty of
 “ union to be concluded betwixt the two
 “ kingdoms *without any alteration thereof, or*
 “ *derogation thereto, in any sort, for ever.*”

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There is indeed no express mention of the abolition of patronage by the act 1690; but is it not evident, both from the words and the spirit of that act, that it was understood and intended, that the Presbyterian Religion should be preserved unhurt, and inviolate, in every particular, as it was then? Now, since the right of patronage has been shewn to be inconsistent with the Presbyterian Religion, it seems to follow, that the act of Queen Anne, reviving that right, was an infringement of one of the unalterable articles of the Union, and consequently contrary to law; for it surely will not be maintained, that an article, declared to be unalterable, may, notwithstanding, be altered. If it may, then the only other article on the same footing must fall too, and our land-tax may be raised above L. 48,000.

This consideration likewise furnishes a good answer to another common topic of declamation in favour of patronage, that it is a civil right conferred by special act of Parliament: but (supposing that this article of the Union may be altered) it is plain that this topic can be of no use in the argument: for
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the question then is, whether the law be good or bad, salutary or noxious? as it surely cannot be maintained, that every act of Parliament that passes must stand for ever unrepealed. This seems to be a doctrine as little calculated for the times as any that can well be figured.

As to the interest of the Crown in this matter, it must be acknowledged that it has gained more by the revival of the act with regard to patronage than any other party concerned; for as the greatest part of patronages belong to the Crown, and as an addition to the number of offices in the Crown's gift will always be thought for its advantage, it cannot be denied that the Crown has profited by the restoration of this right. At the same time, as the rigorous exercise of it will infallibly drive away all the serious people from the Church of Scotland, as that church was certainly firmly attached to our present happy establishment, and, as it is by no means certain what notions the Seceders and other sectaries may entertain, or what turn they may take, it may be doubted whether it be for the real interest of the
Crown

Crown to oppose the abolition of patronage. In 1745, the Seceders appeared in support of our happy establishment, but it is believed they did so, not because they did not think it bad, but because they thought that the other then threatened would be worse. In 1715, and in 1745, the influence of the established clergy over the people in support of government was conspicuous; but now, many of them have lost all sort of influence with their people, and in time, if patronage is continued, the whole of them will. This influence must pass to the schismatic preachers, who, in all probability, will alter their tone, and become disaffected whenever they find that they have the whole, or a great majority of the people, to support them.

Upon this branch of the subject, which is somewhat delicate, it shall only be further observed, that a rigorous exercise of the right of patronage in the Crown, is, by no means, consistent with the clemency shewn in the management of its other rights. The King is always a gracious superiour.— Every man chuses rather to hold of his Majesty than of a subject. Why should not his
Majesty

Majesty be a gracious patron? And here it would be improper to pass over a late instance of benignity and gentleness even in the exercise of the Royal right of patronage.

A vacancy having happened in South Leith, and the West Church, the people in these parishes preferred a dutiful petition to his Majesty, representing their earnest wish and desire, to have the gentlemen, who are now their ministers, settled among them; and his Majesty was graciously pleased to give ear to their entreaties, and to grant a presentation accordingly. An exercise of the Royal right in this manner would surely give much satisfaction to all concerned. It may be seen from the public newspapers how sensible the people were of the favour, and how desirous to express their gratitude to some of the honourable gentlemen in administration who happened soon after to be in this country.

Were the patronages in the Crown to be always used with the same benignity and beneficence, that those just now mentioned were, and the other Royal rights hitherto

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have been ; how happy would it be for the nation that every patronage in Scotland were vested in his Majesty !

As to the interest of the clergy : That the right of patronage is diametrically opposite to the interest of that respectable body, seems to be a proposition as plain as any that can well be conceived. The influence of the clergy with the Crown, and with the landed interest, ought to depend on their influence with the people. The effect of patronage is to lessen, nay, to annihilate that influence ; for, as it has already transferred many, so it will infallibly in time transfer the whole religious people in Scotland to the schismatic preachers : when the whole shall be transferred, what will become of our clergy ? Do they imagine that the landed gentlemen will maintain clergymen for their own private edification ? Do they imagine that the landed gentlemen will continue to pay a heavy land-tax, in order to support a number of men that do not serve the purpose for which they were designed, though they be excellent philosophers, historians, and poets ?

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It must, therefore, at first sight, seem amazing and unaccountable, that clergymen, who in no age of the world have been accused of inattention to their own interest, should desert the people to whom they owe their rise and existence, and sanction measures which must bring contempt, and perhaps ruin, upon their order! It seems impossible to account for the phaenomenon, otherwise than from there being a party among them, which has, for a good many years past, had the lead in church-courts. But the interest of that party does not constitute the interest of the body; and even that party would be satisfied that patronage is not for their interest, were they to allow themselves to think on this subject with the same coolness and ability that they do on other topics.

In case the landed interest and the clergy shall apply for, and obtain a variation of this patronage-act, it will require much wisdom and deliberation to put the election of a minister upon a proper footing; for the act 1690 is doubtless liable to many solid objections. Various opinions have been formed upon this matter, and many seem to wish

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that

that the right of election were lodged with the heritors. That they are entitled to votes is obvious, but if the principles above laid down be just, the power of election should not be lodged in them solely : for the end of settling a minister in a parish is the comfort and instruction, not of the rich, who are commonly understood to be the Heritors, but of the poor, that is the tenants, labouring people, &c. ; and therefore it may be justly doubted, whether that end would be attained, if the right of election were lodged with the former. However, it is needless to enlarge upon this at present ; would it were come to the settling a proper plan ! for, though it would no doubt be difficult, yet it is ridiculous to say that it would be impossible.

In case the landed interest and clergy shall not apply for, or obtain a variation of the patronage-act, then it will be proper to consider whether any method can be fallen upon to remedy, in part, a grievance that cannot be entirely removed. Possibly a good many patronages might be purchased by the people. Several patrons, it is reasonable to think,

think, might be prevailed upon to accept of a good price for their right; and the money requisite for building a meeting-house and supporting a minister, would surely be a sufficient equivalent. But this scheme cannot be of universal use; for many patrons will not sell, many cannot; and, in case a variation of the patronage-act be refused, the only proper relief can come from the patrons, and from the clergy.

Patrons, who are impressed with a sense of religion, cannot, consistently with their own principles, abuse their right; and they would be much confirmed in their good dispositions, by perusing the last chapter of Bishop Burnet's "*Treatise on the Pastoral Care.*" From which, by the bye, it appears that his Lordship considered the right of patronage, even in England, as a sort of grievance.

If there be any patrons, who do not pay attention to religious matters, they, too, should reflect, that the good of the country, and common humanity, require, that they should not use their right with despotic rigour.

gour. That the good of the country requires this, it is hoped has been already proved; and that common humanity requires it, they must perceive, on thinking for a moment on their own situation, and that of the common people. They are gentlemen of fortune, who live in affluence and ease, while the common people struggle with labour and want. It is a common and just saying, that, "A merciful man is merciful to his beast;" and indeed nothing more certainly denotes a bad heart than unnecessary cruelty, or even severity to brute animals: but, if we should be merciful to all creatures, how much more should we be so to mankind? It is undoubtedly the particular duty of those favoured with high station and fortune, to compassionate the hard fate of the people, and to sweeten for them the bitter cup of life as much as possible. Those who have not observed the common people, cannot easily comprehend how much comfort they receive from a minister with whom they are pleased; those who are acquainted with them, know it is very great. If a morsel of oat-cake, and a draught of milk, will be relished more by a poor man, if under the ministry

nistry of a clergyman to his taste, alas ! why should he not be indulged*?

The clergy might, if they pleased, do a great deal. The rich and the poor do not like the same sort of sermons ; for obvious reasons, it is impossible they should. The poor are most ready to believe and embrace the doctrines of religion, but the splendid good works of virtue is beyond their narrow comprehension. What can be more incongruous, than to descant on charity, to a set of men, most of whom have but eightpence a-day ? Discourses on the vanity of riches, the danger of possessing them, the mysteries of religion, and the future happiness of the poor, are those which do, and must delight the bulk of mankind. By what art did Mr Whitefield draw thousands, and ten thousands, daily to hear him?

It

* *Opprimete i contumaci
Son gli 'sdegni allor permessi,
Ma inferir contro gli oppressi
Questo è un barbaro piacer.*

Metast. la Clem. di Tito, A. I. Sc. 4.

It was not by declaiming on moral subjects. He humbled the rich, he comforted the poor; and whoever will do so with tolerable ability, must be popular.

To conclude, a variation of the patronage-act is devoutly to be wished; but if that shall be refused, some check, or palliative at least, should be thought of: for, it is too clear, that the procedure at present is unjust, inhumane, and impolitic.

An opportunity of knowing the particulars of most of the violent settlements, for ten years past, gave rise to these reflections; their publication is owing to nothing but a concern for the people, and good wishes to the church of this country, and is by no means intended to serve or offend any party whatever.

Of Religion.

IN the Monthly Review for 1792, (VII. 350.) I met with the following very singular observation, taken from the Memoirs of Dr William Stahl, a German Physician, who was long in the Inquisition at Goa and Lisbon: "Religion, (he says) in all countries, is the aid of political government; and this is precisely what it should not be: for, if a government supports a particular religion, (rather mode of religion) that religion will support the government; both will go hand in hand together, and make it their point to palliate the defects of one another; oppress those who are inclined to make useful reforms, and spread the seeds of discord and animosity. In Portugal, religion supports political government, political government supports religion; and, by so doing, they disguise the truth from the multitude, and make them the sport of their recipro-

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“cal corrupt interests ; by which error, superstition and injustice are propagated, sanctioned, and consecrated, from generation to generation.”

This paragraph has been written in a passion. Religion, as it addresses itself in the strongest manner to the hopes and fears of men, must acquire, at least during a certain period of civil society, a very powerful influence over them. It can, for a long time, well support itself without the aid of civil government ; nay, it would absorb it altogether, were not many precautions taken to restrain its ministers from the attempt. Every wise government, therefore, will be attentive to religion. The question is, what it ought to do ?

If it be found that a particular religion is congenial to the government, it follows, that such religion ought to be established as national ; and further, that every other religion ought to be proscribed. This concludes against toleration, and leads to persecution ; for toleration affords to sectaries an opportunity of drawing numbers, nay all, from
from

from the establishment ; which cannot be permitted consistently with the supposition, that such establishment is necessary to the being, or well-being, of the state. But then experience has proved, that persecution, *i. e.* punishment, is both a dangerous and insufficient remedy. The consequence has been, that moderate governments have contented themselves with endeavouring to check other religions by discouragements only, such as disabilities and incapacities. But if punishment be unable to check, mere discouragement must be less so ; therefore, as the measure is in itself unjust, it seems to follow, that universal complete toleration ought to take place. If so, it may be thought that the expence (generally enormous) of a national religion ought to be spared, and that every man ought to pay his own priest, which is the rule in some parts of North America. For universal toleration surely implies, that the government has no political apprehensions from any religion ; and supposes that the welfare of the state cannot be effected by any ; therefore, the expence of maintaining a particular one is needless. There ought to be either an universal complete

toleration, or none at all; the middle method of discouragement is evidently inadequate to protect the favoured religion from the inroads of sectaries. Now, if it has not utility to recommend it, justice it certainly has not; and therefore it ought to be discontinued, as it commits wrong, and creates discontent to little or no purpose.

The Pope, who imprisoned Galileo for teaching the true theory of the Heavens, has been condemned very generally, but perhaps not justly. There seems to be great reason for thinking, that he did no more than what a rigid regard for his religion and interest required; for that theory diminished the dignity of the Earth, and, consequently, that of Man, and made way for the supposition of a plurality, and, indeed, infinity of worlds, which might afford a plausible argument to infidels.

One of the late Orthodox Philosophers, after stating a variety of objections to that supposition, adds, "we must believe that the inhabitants of the other planets had the same duties to fulfil with regard to the Divinity;

“ty; but in case of a transgression, such as
“unfortunately happened on our globe, who
“had been the Redeemer to appease the ven-
“geance due to their crimes? Will it be said,
“that the punishment of the Cross was more
“than sufficient to expiate the sins of a mil-
“lion of globes? We cannot doubt of it
“from the extent of the sacrifice; but then
“how much ought we to glorify ourselves,
“that the Son of God made himself Man,
“and gave to our paltry globe the preference
“of exhibiting on it the excess of his love!
“This reflection, well considered, must ex-
“clude the system of plurality of worlds, or,
“at least, adjudge to our earth a prefer-
“ence over the other planets.”—*Recherches*
sur les influences solaires et lunaires, par Mr
Robert de Lo Loaza a Londres 1788.

Since writing the above, I have read Paine's
pamphlet, entitled, “The Age of Reason;”
and I find, that his chief argument against
Christianity is founded on the infinity of
worlds. See p. 56. “From whence then
“(he says, p. 46) could arise the solitary and
“strange conceit, that the Almighty, who
“had millions of worlds, equally dependent
“upon

“ upon his protection, should quit the case
 “ of all the rest, and come to die in our
 “ world, because they say one man and one
 “ woman had eaten an apple? And, on the
 “ other hand, are we to suppose that every
 “ world in the boundless creation had an
 “ Eve, an apple, a serpent, and a Redeemer?
 “ In this case, the Person, who is irreverently
 “ called the Son of God, and sometimes God
 “ himself, would have nothing else to do,
 “ than to travel from world to world in an
 “ endless succession of death, with scarcely a
 “ momentary interval of life.”

The observation of both authors seems to
 be founded on a supposition of which there
 is no evidence, nor indeed probability, viz.
 that all other worlds are similar to ours.

I have often heard it asserted, that the
 Presbyterian Religion was democratical; but
 that it is by no means such will appear
 from the following passage in our Confes-
 sion of Faith (iii. 6, 7.) “ As God hath ap-
 “ pointed the *elect* into glory, so hath he by
 “ the eternal and most free purpose of his
 “ will, for-ordained all the means thereun-
 “ to.

“ to. Wherefore, they who are elected be-
“ ing fallen in Adam, are redeemed by
“ Christ, by his Spirit working in due sea-
“ son ; are justified, adopted, and sanctified,
“ and kept by his power through faith un-
“ to salvation. Neither are *any other* re-
“ deemed by Christ effectually called, jus-
“ tified, adopted, sanctified, and saved, but
“ *the elect only. The rest of mankind* God
“ was pleased, according to the unfearchable
“ counsel of his own will, whereby he ex-
“ tendeth or withholdeth mercy as he plea-
“ feth, for the glory of his sovereign power
“ over his creatures, *to pass by and to ordain*
“ *them to dishonour and wrath for their sins, to*
“ *the praise of his glorious justice.*” And chap.
x. §. 3. Declares, “ *Elect* infants, dying in in-
“ fancy, are regenerated and saved by Christ,
“ through the Spirit, who worketh when,
“ where, and how he pleaseth. So also are
“ all other *elect* persons who are incapable
“ of being outwardly called by the ministry
“ of the word. *Others not elected*, although
“ they may be called by the ministry of the
“ word, and may have *some common operations*
“ *of the Spirit*, yet they never truly come
“ unto Christ, and therefore cannot be sav-
“ ed ;

“ed; much less can men, not professing the Christian Religion, be saved in any other way whatsoever, be they never so diligent to frame their lives according to the light of Nature, and the law of that Religion they do profess, and to assert and maintain that they may, is very pernicious, and to be detested.”

It is the interest of all monarchies and aristocracies to encourage the defence of such a Religion; for as men readily believe what they wish, few Christians will doubt of their being of the elect; and whenever they believe that few only are to be saved, and that all the rest are to be doomed to dishonour and wrath, in the next world, that must have a strong tendency to reconcile them to inequality of fortune in this. And as they believe, at the same time, that there is in Heaven a gradation by intermediate ranks from the Deity to the saint, they cannot disapprove of there being an analogous gradation on earth from the king to the clown.

The French (it is said) have abolished Christianity altogether, which they were enabled to do in consequence of the incessant

fant attacks made upon it by their best writers, from Voltaire to Volney. The last has proved himself by far its boldest and most formidable adversary, (Mr Gibbon himself not excepted,) for he insinuates, that no such person as Jesus Christ ever appeared upon earth. All the proof of his having ever existed, that can be referred to is (he says) a passage from the Jewish historian, Josephus, which is clearly and confessedly interpolated; and another from the Heathen historian, Tacitus, which contains no more than what the Christians said when examined judicially; for, as to the Gospels, these were not written by the persons whose names they bear, but by others long after. He contends also, that all the peculiar tenets and doctrines of Christianity were known over the east from the most remote antiquity, having been taught by a sect called Samareans, which the Christians did no more than revive; hence the Chinese, when the Missionaries attempted to convert them, exclaimed, that they were preaching Fa. As this author's book has been translated into English, and is openly sold in the shops, some of our able Divines ought to write an answer to him,

and apply themselves particularly to the topics I have pointed out ; as from their novelty and audacity, there is a hazard of their making some impression. *The French clergy declined (it is believed) entering the lists with their enemies, and the consequence was fatal.*

Paine, when he wrote his Age of Reason, seems not to have read Volney ; for he does not take the least notice of the ideas suggested by him. That there was nothing new in the Christian religion, had been observed, near two hundred years ago, by an Ecclesiastic, viz. Charron, in his *Treatise de la Sagesse* : he says, that in the newly-discovered countries, (meaning the East and West Indies) “ Presque toutes les choses, que nous
 “ estimons ici tant et les tenons nous avoir été
 “ premierement revelées et envoyées du Ciel
 “ estoient en créance et observance com-
 “ mune plusieurs mille ans auparavant qu’en
 “ eussions ouï les premières nouvelles soit au
 “ faut de Religion, comme la créance d’un
 “ seul premier homme pere de tout, du dé-
 “ luge universel, d’un dieu qui vesquit au-
 “ trefois en homme vierge et saint, du
 “ jour du jugement, du purgatorie, resurrec-
 “ tion

" tion des morts, observation des jeunes, ca-
 " refme, cælibat des pretres, ornements
 " d'Eglise, furplis, mitre, eau benifte, adora-
 " tion de la croix, circoncifion pareille a la
 " Juifve et Mahumetane." Liv.II. c. 2. p. 299.
 edit. 1606.

Of Incredulity.

SOME men are too easy, others too difficult of belief. I have met with more incidents than one, which confirm me in this opinion. Some years ago, in the course of an argument I had with a friend, on the veracity of Herodotus, and the truth of his account of Egypt, his assertion, that the men of that country, "*mingunt sedentes, feminae stantes*," was produced as an irrefragable proof of his deviation from fact. At the very instant, a Gentleman came in, who had been long in India, (the late Sir James Fowlis of Colinton) I stated to him the objection that had been started against the Historian, upon which he said, he did not know how men did in Egypt, but he had seen them do so in India.

Mr Bruce, of Kinnaird, the celebrated traveller, was not believed, when, upon his return home, he related, that the Abyssinians were

were in the use of cutting the flesh from living animals, and eating it raw. This I believed readily; having read that this was a very ancient practice in the East, particularly in the countries adjoining Judea.—Hence, many Jewish doctors interpret the precept against eating blood, (which is said to be the life thereof, *i. e.* the animal) to mean eating it in that manner. See Selden *de jure nat. & gent.* VII. c. 1.

I mentioned this in August 1775 to an English clergyman, at that time in this country, who was ridiculing Mr Bruce; carried him to the Advocates' library, and shewed him the passage in Selden, which surprised him very much. Mr Bryant too, in his *Mythology*, 11, 12, 13, shews, that this practice obtained among the Greeks and Romans in the Orgies of Bacchus; and, on other occasions, it was called Raw-eating. I communicated all this to Mr Bruce some months before his *Travels* were published, and had a letter of thanks from him; but his book having been printed off by that time, he takes no notice of these passages. He quotes some authors, but Selden is more
full

full and satisfactory upon it than any other author.

It is frequently said, That Ignorance is the mother of Credulity ; it may be added, of Incredulity too.

Herodotus was himself sometimes too incredulous : he relates many particulars from hearsay, adding, that they, to him, were incredible. He was right to relate these stories, for several of them have since been proved to be true, by what the Phenicians said of their having seen the Sun on their left when departing from the Red Sea ; they sailed round Africa, and returned to Egypt by the Pillars of Hercules : this he disbelieved ; but Gessner, in a Dissertation subjoined to his *Orpheus*, has evinced its truth. Savary, in his *Letters on Egypt*, lib 11. p. 29, bears testimony to the fidelity of Herodotus ;---
“ c’est avec la plus grande satisfaction que
“ je retrouvé dans ce pays les mœurs, les
“ usages qu’il a décrit avec quelques légères
“ modifications que le changement des do-
“ minations & des religions y ont intro-
“ duits.”

Of

Of Education.

I THINK it my duty to observe, that I am clearly of opinion, that the acquisition of Greek and Latin costs children more time and pain than it is worth now a-days ; I say now a-days, because, as the late Mr Sheridan has justly remarked, there is a great difference as to this matter between our days, and those in which Europe emerged from barbarism, and when letters were revived. Then there was neither language nor taste among men, and these could not be attained but by studying the classics ; but after a country has got a language, taste, and classics of its own, it ought to lay aside the troublesome ladder by which it mounted, there being no longer any use for it. Childhood, naturally happy, ought not to be made artificially and needlessly miserable ; but it is the great misfortune and curse of mankind, that they will continue practices, not only after the reason for introducing them has ceased, but after the

the reason for a contrary practice has commenced.

I have often, when maintaining this argument, been asked, How, then, are our children to be employed? to which I have always answered, and do now answer:—How did the Greeks and the Romans employ theirs? How theirs—the Egyptians, Judeans, and the other powerful and polished nations in different quarters of the globe? The Greeks at no time taught their children any other language than their own; nor the Romans, for seven hundred of their best years, not till towards the close of the republic, when Greek, which was then a living, not a dead language, came in fashion with them, as French is with us. A most proper and rational plan for the education of the children, both of the rich and poor, that will enable them to discharge the duties of the station for which they are intended, may be seen in Helvetius, Mercier, and various other writers.

Let me not be understood as meaning to detract from the merit of the classic authors
of

of Greece and Rome. No man has read them with more delight, few have read them oftener than I; but I must say, "*Le jeu ne vaut pas la chandelle.*" Boys, to acquire a tolerable knowledge of Greek and Latin, must spend seven years of their lives, five at school, and two at the College; and these in drudgery and distress, even when their masters are not passionate and cruel. If they be so, which is too often the case, they are put into a situation which I am unwilling to describe, but which parents would do well to consider.

Boys, however, who are designed for what are called the learned professions, must submit to this misery, as long as a knowledge of these languages is deemed necessary for these professions; but that ought not to be, and I hope and believe that will not be very much longer the case.

Some think it is for the advantage of boys to see, in miniature, at school, what they must afterwards meet with upon a great scale in the world at large. According to that idea, the school I attended was a model. There we saw every day the progress of merit obstructed

structed by partiality; there we saw it every year obliged to give place to wealth. The *aurati*, that is those who, at Candlemas, gave gold, not less than half a guinea, (of whom I was one) had the play an hour or two for some days; and, upon this occasion too, the classes were assembled in the common hall, and the order was given *bis, ter floreat* such a boy, according to the number of pieces he had presented. Upon *floreat* being pronounced, all the boys shouted, and beat the floor with their feet.

Here I cannot help mentioning a singular incident enough, that happened on one of these occasions, when I was at the Rector's class:—Two boys gave three guineas each. Both were entitled, but only one could be Dux. The Rector, with an embarrassment of face which I shall never forget, signified that he was altogether at a loss how to proceed, and that they must do something to extricate him from the puzzle: upon this, one of the boys took a halfpenny out of his pocket, got up, and stretched out his arm towards the Rector, and called out, "There!" The Rector, supposing it to be a guinea
more,

more, advanced with great complacency of countenance, but, on seeing the coin, fell into a most enormous rage; yet the laugh was so loud, and so long, and so just against him, that he was forced at last to join it himself, and settle the matter without any further pecuniary interposition in some way or other which I do not recollect.

What I have said above, as to Greek and Latin, applies also to the civil law. When the Pandects were found at Amalphi, in Italy, about seven hundred years ago, it was a great discovery for Europe, because it was then in a state of barbarism; and the general principles of equity are explained by the Roman lawyers with great acuteness and elegance; but at least three-fourths of the Roman system is inapplicable to modern nations; and therefore it ought either not to be taught at all, or those titles of it only which are general and useful: but my head, and the heads of my fellow-students, were stuffed with the Roman titles of Slavery, Adoption, and a hundred others, which I know, from more than thirty years experience, are of no more

use to a Scotch lawyer, than the Alcoran of Mahomet. The application we gave was vigorous ; what a pity it was so misdirected ! What ought to be taught previous to the study of the Scotch law, is, universal justice and morality, “ le droit des Gens ;” and while at the Scotch law, the student ought to attend a writing chamber for some time, to acquire some knowledge of stiles and forms, as also of the antiquities of his country. But the old method is still followed, though references to, or quotations from, the civil law, are now seldom made, and the few who still continue to quote texts and doctors, are laughed at.

Of Happiness.

It has been much disputed, whether the savage or the social state be happiest. It seems to me to be a very problematical question. It is much against the latter, if what some have alledged be true, that, though many have returned from the civilized to the savage state, none ever did from the savage to the civilized. Dr Johnson, who preferred the former, was in use to say, by way of argument, "That the Savage was always either "sleeping in his den, or chasing his prey."—If so, his situation, when attended to, will afford a very strong argument for giving the preference to the savage state; for, according to the Doctor, the Savage has his time divided into two portions; during one of which he is happy, (for the chase is most agreeable labour) and, during the other, not miserable; but, in civilized society, numbers have no prey to chase, and cannot sleep even in the night time.

A man

A man must be more or less happy, according as the exertion of his faculties, mental and corporeal, is more or less completely vigorous.

Consequently that must be the best mode of government which affords the greatest scope for that exertion.

It has been said, that men, under the ancient democracies, had feelings and sensations of which we have no notion. I believe they had, but we are well rid of many of them, viz. those arising from domestic slavery. In Rome, there was a whip hanging on the stair-case of every house.

Prosperity alone cannot make either an individual or a nation happy.

LETTRE.

Au Rédacteur du Courier de l'Europe.

Edinbourg, 23 Décembre, 1783.

MONSIEUR,

La hardiesse philosophique de M. le Marquis d'Arlandes doit être applaudie de tous les amateurs ; and je me flatte que ce voyageur intrépide ne me saura pas mauvais gré de lui avoir indiqué les vers dont il peut à juste titre se servir désormais pour devise :

————— Veni nec puppe per undas
Nec pede per terras ; patuit mihi pervius aer*.

Le nom de Franklin, qui se trouve parmi plusieurs autres noms illustres au bas du procès-verbal de l'expérience de M. le Marquis, me rappelle une observation que j'ai faite il y a quelque temps, & que je crois pouvoir faire à présent assez à propos. Il me semble que l'art d'attirer le feu électrique des nues,
pendant,

* Ovid. Metam. v. c. 54.

pendant qu'il tonne, étoit connu par des Savans d'une antiquité très-reculée. Je me fonde sur un conte d'Ovide & sur un fait rapporté par Tite-Live. Ovide nous apprend* que Numa, second Roi de Rome, effrayé par le tonnerre qui avoit duré plusieurs jours, consulta la Nymphé Egérie, & qu'elle lui répondit :

————— Piabile fulmen

Est, ait, & sevi flectitur ira Jovis.

Sed poterunt *ritum* Picus Faunusque piandi

Prodere; Romani numen uterque soli,

Nec sine vi tradent; adhibeto vincula cæptis.

Numa fit tout ce que la Nymphé lui avoit conseillé.

Quoque modo possit fulmen, monstrate, piari.

Sic Numa, sic quatiens cornua Faunus ait

Arbitrium est in sua tela Jovi,

Hunc tu non poteris per te *deducere calo*.

At poteris nostra forsitan usus ope.

Emissi quid agant laqueis, quæ carmina dicant,

Quaque *trabant superis sedibus arte Jovem*

Scire nefas homini: nobis concessa canantur,

Quæque pio dici vatis ab ore licet:

Eliciant

* Fast III. 285, & seq.

*Eliciunt cælo te, Jupiter, unde minores
Nunc quoque te celebrant, Eliciumque vocant.*

Tout cela est expliqué merveilleusement par le passage suivant de Tite-Live.

“Ipsum Regem (scilicet Tullum Hostilium,) tradunt, volentem *Commentarios Numæ*, quum ibi quædam occulta solemnia sacrificia *Jovi Elicio* facta invenisset, operatum his sacris se abdidisse: sed non *rite initum aut curatum id sacrum esse*; nec solum nullam ei oblatam cœlestium speciem, sed ira Jovis, sollicitati prava religione, *fulmine ictum* cum domo conflagrasse.”

Voici un Roi tué par un coup électrique (comme l'a été un Professeur Russe il y a quelques années) faute de n'avoir pas pris les précautions nécessaires en faisant une expérience périlleuse.

Il y a aussi un passage d'Athénée, d'où on peut conclure que l'électricité n'étoit pas inconnue aux personnes de son temps versées dans la *magic naturelle*. Il dit d'un certain Xenophon: “*Emicantem sponte ignem hic PP eliciebat*”

eliciebat & aliis id genus multis spectris quæ ingeniose machinabatur, hominum obstupentium judicia perstringebas & ludificabatur."

J'ai l'honneur d'être, &c.

Of the Balloon.

I FIND, from a French translation of Carli's Letters, published at Boston in 1789, that he has made the same remark as to electricity. He quotes the passage of Livy above recited; but not that of Ovid, of which, therefore, I suppose he did not know. He refers also to the Meteorologie of Carli, which proves, that, for time immemorial, a Parratonerre had been kept in a bastion, in the castle of Dueno, in the Adriatic. The centinel, on guard, presents a halberd to it, when there is the appearance of a storm, and if it emit sparks, he rings a bell to give warning.

There is a book in the Advocates' Library, printed at Nuremberg, in 1676, and entitled, "Collegium experimentale five curiosum," by T. Christ. Sturmus; which gives an account of Lana's Balloon, mentioned in the

the Naples Gazette, quoted by the Courier. I took from it the following excerpt, it is entituled, "*Inventum P. Francisci Lanæ singulare hoc est, Naviculæ per aerem, remis, velisque agenda possibilitatem, planiore ac simpliciore modo commonstrans**. The method is by spheres, globes, or balloons, of copper, and a certain diameter, from which the air has been exhausted: p. 63, he says, "*Orbem cupreum, ex ejus generis laminis, quales supra num. VIII. descripsimus, paratum, qui 16 pedum diametrum haberet, & artificio quodam evacuatus esset, non solum nataturum libere in aere & sublimia petiturum, sed & preterea pondus extrinsecus appensum plus quam 60 librarum una sublevaturum*. And, by increasing the bulk, it will carry one, two, or three men, &c.; at p. 64, he gives the figure.

Mirabeau had great expectations from the balloon, as appears from his seventh letter to Mauvillon, where, after desiring him to consider of its application to war, he adds, "Quand

* Vide Tentamen X. p. 56.

“ Quand a l’etendue philosophique de cette
 “ decouverte, c’est une mer sans bords, ou
 “ l’esprit humain fera pendant plusieurs
 “ siecles les decouvertes les plus decisives &
 “ les plus influentes. Je l’ai toujours pense &
 “ je ne m’en dedis pas.”

Mercier is of the same opinion; he expects, that in time, and indeed in twenty-five years, a method will be fallen upon for giving it a horizontal direction, and making it move in the air as a fish does in water.

M. le Baron Scot has imagined a balloon upon this idea; it perfectly resembles a fish: he published a description of it in a small Treatise at Paris 1789.

In company with the late Adam Smith, I saw, on the Castle-Hill, Lunardi ascend from Heriot’s Gardens *. It was a sight the most magnificent, and the most honourable to human nature, I ever beheld. The Courier de l’Europe, after inserting my letter,
 adds

* In 1784.

adds an article from Paris, which bears, that, at an assembly, where a lady of distinction presided, she paid the following compliment to Montgolfier and Rosier, who happened to be present: “ Je voudrois que les hommes
“ de genie qui font des decouvertes utiles
“ ou glorieuses a leur patrie, fussent divinises,
“ les machines areostatiques de M. Montgol-
“ fier m’ont fait croire que mes souhaits al-
“ loient s’accomplir; a voir la hardiesse avec
“ la quelle les navigateurs aeriens s’elevoi-
“ ent dans les cieux, ils me sembloient re-
“ tourner vers leur pays natal.” This com-
pliment is just, and well expressed.

Of the Alteration of the Seasons.

It is long since many, of whom I am one, have maintained, that the Seasons are altered; that it is not so hot now in summer as when we were boys. Others laugh at this, and say, that the supposed alteration proceeds from an alteration in ourselves; from our having become older, and consequently colder.

In 1783, or 1784, in the course of a conversation I had with my brewer, who is very intelligent and eminent in his way, he maintained that an alteration had taken place. This observation he made from a variety of circumstances; the diminution of the number of swallows, the coldness that attends rain, the alteration in the hours of labour at the time of sowing barley, which a great many years ago was a work performed very early in the morning, on account of the intenseness of the heat after the sun had been up for some time. He added, that, for many years past, he had
found

found that the barley did not malt as formerly, and the period he fixed on was the year in which the earthquake at Lisbon happened.

I was much surpris'd at this last observation, and did not pay much attention to it till last summer, when I happened to read "*Les Annales Politiques*," of Linguet, a very scarce book, which I was sure my brewer had never read; for there, to my astonishment, I found the very same opinion, with this additional fact, that, in Champagne, (where he was born) they have not been able, since that earthquake, to make the same wine. He says too, that he has seen the title-deeds of several estates in Picardy, which proved, that, at that time, they had a number of excellent vineyards, but that now no such crop can be reared there. He also attempts to account philosophically for that earthquake having such effects. See *Annal. Politiq.*

OF THE
PERFECTIBILITY
OF
M A N.

And yet the wholesome herb neglected dies,
 Tho' with the pure exhilarating soul
 Of nutriment and health, and vital powers,
 Beyond the search of art, 'tis copious blest'd.
 For, with hot ravine fir'd, infanguin'd man
 Is now become the lion of the plain,
 And worse. The wolf, who, from the nightly fold,
 Fierce drags the bleating prey, ne'er drunk her milk,
 Nor wore her warming fleece : Nor has the steer,
 At whose strong chest the deadly tyger hangs,
 E'er plow'd for him. They too are temper'd high,
 With hunger stung and wild necessity,
 Nor lodges pity in their shaggy breast.
 But *Man*, whom Nature form'd of milder clay,
 With every kind emotion in his heart,
 And taught alone to weep ; while from her lap
 She pours ten thousand delicacies, herbs,
 And fruits, as numerous as the drops of rain,
 Or beams that gave them birth : Shall he, fair form !
 Who wears sweet smiles, and looks erect on heaven,
 E'er stoop to mingle with the prowling herd,
 And dip his tongue in gore ? The beast of prey,
 Blood-stain'd, deserves to bleed : But you, ye flocks,
 What have ye done ? ye peaceful people, what,
 To merit death ? you, who have given us milk
 In luscious streams, and lent us your own coat
 Against the winter's cold ? and the plain ox,
 That harmless, honest, guileless animal,
 In what has he offended ? he, whose toil,
 Patient and ever ready, clothes the land
 With all the pomp of harvest ; shall he bleed,
 And, struggling, groan beneath the cruel hands
 Even of the clown he feeds ? and that, perhaps,
 To swell the riot of th' autumnal feast,
 Won by his labour ? Thus the feeling heart
 Would tenderly suggest : but 'tis enough,
 In this late age, adventurous, to have touch'd
 Light on the numbers of the *Samian* sage,
 High HEAVEN forbids the bold presumptuous strain,
 Whose wisest will has fix'd us in a state
 That must not yet to pure perfection rise.

Thomson.

Of the Perfectibility of Man.

Intrandum est in rerum naturam et penitus quid ea postulet pervidendum.

Cic. de finibus. V. 16.

TURGOT, and after him Helvetius, Rousseau, Mercier, and several other writers, both French and English, have asserted; that there is a possibility of mankind arriving in time at a state of perfection; and they have given many pleasing representations of his progressive attainments in art, science, and felicity. The latest of these philosophers, Mr Godwin, in a book entituled, "An Inquiry concerning Political Justice, and its influence on Morals and Happiness," has far surpassed his predecessors in his speculations on this subject; for he maintains, that, in time, such will be the influence of truth and justice, that man will entirely subdue his passions, and constantly act in conformity to reason. So that, according to his sys-

tem, he maintains, there would be then no occasion for government, law, punishment, or labour; that, in time, mind will become (as Franklin, he says, predicted) omnipotent over matter; nay, what is a still more extraordinary notion, that man will, in time, discover the means of rendering himself immortal.

It is not proposed, in this paper, to examine, whether the expectations of this author be reasonable or romantic; but to show that, supposing them all to be in the course of time realized, that the system of human nature must, nevertheless, remain miserably imperfect, unless some very great radical change be made in the nature of man, which none of the advocates for perfectibility are willing to admit, not even Mr Godwin himself.

That author is bold enough to assert, that half an hour a-day, seriously employed in manual labour, by every member of the community, would sufficiently supply the whole with the necessaries of life; and that the rest of the day might suffice in a simple
state

state of society, "for the fabrication of tools
"for weaving, and the occupation of tailors,
"bakers, and *butchers*." It is, however, conceived, that his allowing the last-mentioned trade to exist, that is, his toleration of consuming the animal food, taints, and indeed poisons his whole system.

The French author so often referred to in this work *, furnishes me with an excellent introduction to this question, as to the possibility of man's ever attaining a state of absolute perfection.

"Observe (says his instructor) that the
"blood of animals does not flow, and excite
"the idea of carnage in the streets: the air
"is preserved from that cadaverous smell,
"which engendered so many diseases: cleanliness is the sign the most unequivocal of
"order, and public harmony it reigns every
"where. With a precaution salutary, and,
"I will be bold to say, *moral*, we have placed the shambles without the city."

Now,

* See Mercier's *L'An Deux Mille Quatre cent Quaranti*.

Now, it may be asked, Why is this precaution *moral*? as this author expresses it; for his words are, “ Par une precaution et j’ose-
“ rois dire morale :” the question is very material, and the idea of precaution being considered by such an author as moral, tends much to prove the difficulty, if not impossibility, of human nature ever becoming perfect.

It is thought, that it will appear still more obvious to every impartial reader, that perfection is too inconsistent with the nature of man in his present state, for the species ever to attain perfection, if the following question, suggested by a particular friend of mine some years ago, be deliberately considered;—he asked me, How it happens, that, if it be not wrong for a man to kill an ox, that he may eat his flesh and tan his skin, why should it be wrong for a man, if he can do it with secrecy and impunity, to kill his neighbour, that he may possess himself of his money and cloaths, of which perhaps he stands very much in need? I put not this question, he said, to priests or philosophers; but to you, whom I know to be a man of a plain
and

and unwarped understanding, desirous of discovering Truth, and willing to present to her a *carte blanche*, let her write upon it what she may. This question, I confess, I could not answer at the time, and, indeed, I cannot yet, after thirty years meditation; nor do I believe that any answer can be given, although it may afford argument for a long dissertation, in which there will be, probably, much more ingenuity than candour.

This *moral* question, the sight of the shambles, would, no doubt, frequently stir in the breasts of all humane thinking people; and it is plainly with the view of quashing any such inquiry, that Mercier wishes them to be placed out of view.

For the sake of argument, as well as for the entertainment of the reader, it may not be improper to relate two incidents that happened to the very same friend*, more than
thirty

* The Editor has every reason to believe, that the friend alluded to in this and the above passage, is the author himself;

thirty years ago. At his house, in the country, he had a number of ewes and lambs; the latter of which were killed from time to time, for the use of his family. One summer morning, when he went out to walk, he was shocked at the plaintive and despairing cry of an ewe, whose lamb had been killed some hours before; but what was his agitation, when she boldly came up to him, stared him in the face, and pawed the ground! he immediately turned from her, conscious of her wrongs, and tortured with the horrors and pangs of remorse, (for the assurance of impunity can only subdue fear, not conscience,) and he has often declared, that the appearance of this harmless animal, that day, would never be effaced from his memory so long as he should retain his faculties.

Not long after this, he met a number of farmers in his neighbourhood, one morning running up a hill, above his house, with
won-

self; although, probably, from motives of delicacy and diffidence upon so very speculative and metaphysical a subject, he wished to impute the thought to another.

wonderful eagerness : upon his inquiring what the matter was, they told him, that they were in pursuit of a fox, who had taken several lambs from each of their flocks ; upon which they got out into a great rage against the cunning beast, calling him, Villain, robber, and sly rascal ! but they comforted themselves with the thought, that they would soon be able to put him to death. Upon which my friend looked archly at them, and said, Pray, good people, what would *you* have done with the lambs, if *he* had not taken them away ? They, no doubt, feeling the force of the question, returned him a look, and ran on without making any answer ; and their silence was certainly judicious. The argument of the Wolf, in the Fable, is very applicable to this subject :

Il vit des Bergers, pour leur rôti,

Mangeans un Agneau cuit en broche,

Oh ! oh ! dit-il, je me reproche

Le sang de cette gent : Voilà les gardiens

S'en repaissant eux & leurs Chiens,

Et moi Loup, j'en ferai scrupule ?

Non, par tous les Dieux : non, je serois ridicule.

Thibaut l'Agnelet passera,

Sans qu'à la broche je le mette ?

Et non-seulement lui, mais la mere qu'il tette,

Et le pere qui l'engendra.

RR

Le

Le Loup avoit raison. Est-il dit qu'on nous voie
 Faire festin de toute proie,
 Manger les animaux ; & nous les réduirons
 Aux mets de l'âge d'or * autant que nous pourrons ?
 Ils n'auront ni croc, ni marmite ?
 Bergers, Bergers, le Loup n'a tort
 Que quand il n'est pas le plus fort :
 Voulez-vous qu'il vive en hermie ?

FONTAINE, X. 6.

I have heard this my friend frequently maintain, that our slaughter of the harmless brutes saps the very foundation of morality. If, he said, their dissimilarity and inferiority in point of organization and intellect, justify man in his maltreatment of them; it follows, upon the same principle, that a man, superior in figure and understanding, may justly consider men inferior to him in these qualifications, in the same light in which we view the brutes, and make them subservient to his passions and pleasures without remorse.

Cæsar, and other conquerors, who have been each of them the means of destroying
 my-

* Des premiers temps, ou les hommes vivoient de glan & de légumes.

myriads of men, probably reasoned in that manner.

Pythagoras, he added, saw this, and therefore taught his disciples, " That, if they
" meant to conform themselves exactly to
" the dictates of justice, they must not com-
" mit any injury even to their fellow-crea-
" tures; for how could they persuade men
" to act justly to one another, if they them-
" selves were found aggrieving their fellow-
" animals, composed of the same elements,
" and participating of life like them." See
the Life of Pythagoras, by Jamblichus, cap.
24.

Mercier, in a work subsequent to that
formerly quoted, foreseeing this objection, has
employed several pages in an attempt to ob-
viate it*.

He begins with saying, that there is no *re-*
lation between mankind and the brutes; and

RR 2 yet

* See his *Notions Claires sur les Gouvernements*, vol. I.
p. 232; and vol. II. p. 36.

yet he concludes with declaring, that we do and ought to pity their sufferings.

This is inconsistent; for if there be no relation between us and the brutes, how comes pity for their sufferings to arise in our breast? The very emotion indeed proves the relation.

There are none between us and plants; and as they do not feel pain, at least perceptibly to us, we therefore do not feel pity at their destruction.

Mercier also adds, that there cannot be any *obligation* between us and the brutes. If, by obligation, he means contract, the position is certainly true; but the argument founded on it will, nevertheless, prove too much. It tends to prove, that a man may kill and eat a negro sold to him in Africa, or an infant child, which he finds exposed any where. It supposes, that there are no obligations but what are conventional; no foundation of justice, but utility, which is inconsistent with his own admission; that we ought not to dispense with pity to the brutes; and

and that we ought to relieve their sufferings. Now, why should we do so, if there be no relation or obligation between us?

As to the argument from necessity, on which this author insists very much, there is no doubt that necessity will justify men, not only for eating other animals, but even one another. It would be, however, as unnecessary as it would be absurd, to combat that argument; for, if it be held to be necessary that men must devour other animals, and, at the same time, if it be unjust that they should do so, as has already been shown, then it follows, that mankind cannot attain perfection in this world.

Rousseau, who, in his Preface to his celebrated Essay on the inequality among men, derives the law of nature from love of self, and pity to others, is much more consistent on this subject than Mercier: his words are,
“ As long as man shall not resist the immediate impulse of compassion, he will never
“ do harm to another man, nor even to any
“ being that hath feeling, except in case his
“ own preservation be at stake; then he may
“ do

“do it legitimately, being forced by the impulse of nature to give the preference to himself.” This affords a solution of the ancient dispute, as to whether animals participated of the law of nature : for it is clear, that, if deprived of knowledge and liberty, they cannot recognise any such law ; but being of a nature analogous to our own, in consequence of the sensibility with which they are endowed, we must determine that they ought to participate of natural law, and that man is bound to perform some sort of duties to them. It seems indeed clear, that, if I be not obliged to do any harm to a human creature, it is less because he is a rational, than because he is a feeling, being ; which qualification being common to beast and man, ought at least to give the former the right of not being maltreated needlessly by the latter.

The Gentoos, in sparing tygers, lions, and other beasts of prey, act absurdly and inconsistently : for, if their object be the preservation of animal life, they ought undoubtedly to destroy all its enemies. They likewise act absurdly in sweeping the streets before

fore they walk out, for fear of crushing insects. This absurd practice of theirs is founded on an error in physics. They suppose that all animals are visible. A Gentleman, who had been long an officer in India, told me, that once, in arguing upon this point with a Bramin, and in order to prove that it was impossible for him to avoid destroying myriads of animals, do what he might, he took a microscope, and shewed him a number of animalcula in a glass of water; the Bramin, confounded at this, turned away his head, saying, It was a deception.

Mr Godwin says, " That virtue enjoins
" us to do our utmost to promote the hap-
" piness of all *intelligent* beings." Now, it surely may be asked, why he limits the obligation to intelligent creatures? why does he not extend it to all animated harmless beings? Do not we feel satisfaction and pleasure when we allow a butterfly that has got into the room, to escape? A Gentoo, who hurts no animal, but exerts himself to the utmost to give all of them protection and happiness, is certainly more praise-worthy than Mr Godwin; who, with all his system of perfection,
whilst

whilst he allows butchers and shambles to be necessary to society, can, comparatively speaking, be viewed in no other light than as a reasoning animal of prey. I am, however, rather inclined to suspect, from the genuine principles of his theory, that what he has said about butchers, has crept into his book from inattention; and that he will, perhaps, blot it out on reflection, and afterwards support the doctrine suggested by some French authors, of the possibility in time of discovering an universal vegetable food for man.

There is but one method of enabling men to avoid animal food, and that is to confine them to their natural climate, a warm one, which they do not quit but upon compulsion, *non nisi coacti*, as Linnæus expresses it. There they find abundance of fruits and vegetables, their natural food; for they are carnivorous, not by nature, but by necessity. This confinement, however, could not long afford them that happy dispensation, and preserve to them the degree of perfection they might attain when in their natural and best state; for they must soon be under
der

der the necessity of resorting to the practice tolerated by the nations, and even philosophers of antiquity, and still allowed in China, of checking population, otherwise they would multiply so fast as to render the consumption much greater than the produce of food ; the consequence of which would be, emigration to unfruitful countries, and that of itself necessarily introduces animal food.

The speculation as to the killing of animals naturally leads me to the consideration of the Slave Trade.

I have never yet been able to perceive how those, who do not condemn our slaughter of the brutes, can, with consistency, declaim vehemently against, and insist for, an abolition of Negro Slavery.

I hear the cries of a negro agonizing under the severe whip of a Planter : I run up, buy him, give him his liberty, and some money : then he, himself, goes to a cattle market, purchases some sheep, tears a lamb from its mother, and kills it before her eyes for his dinner : I ask, What title has that

ss

black

black man to complain of his former misery and slavery? for what right had he to kill the lamb? he may answer, *Le droit de plus fort*. I reply, his master had the very same right to scourge him to death.

If the sole foundation of justice be utility, and a great utility justify the slaughter of the brutes, the lesser utility of sugar and tobacco will justify, on the same principle, the lesser evil of negro slavery; and, in that view, the question of abolition comes to be a mere question of fact: Is negro slavery absolutely necessary for that culture, or not? If it shall be said, that sugar and tobacco are not so necessary to man as animal food, I answer, that an absolute necessity is out of the question; for that animal food is not absolutely requisite to his existence, is proved by the practice of the Gentoos in India, and of the very poor almost every where. The necessity alledged does, in reality, resolve into no more than a very great utility, excepting in some very unhospitable regions, where savages can alone subsist by means of the arrow or harpoon; and where they would be excusable upon the same

same principle of necessity for eating one another, were game and fish not to be found.

It may indeed be maintained, that there is a political necessity for it; because, were we to abandon our very considerable share of the productions of the Indies, and abolish slavery, our possessions there would soon be occupied by some other nation; so that the whole effect of doing so, would be to diminish the trade of Great Britain, and not to better the state of the Negroes of Africa.

It has also been maintained by the Advocates for this Slavery, that, though all European nations were to renounce the Slave Trade, no advantages would accrue to the Negroes themselves from the adoption of such a measure; because, if not removed as slaves to the West Indies, they would, nevertheless, be subjected to slavery, in consequence of the despotic, warlike, and cruel disposition of their kings at home.

This is, no doubt, as good an apology for Negro Slavery as that for animal food; which

is founded on the supposition, that, if brutes were not destroyed by men, they would be so by one another. An argument that goes to prove, that, if I were certain, or even had reason to believe, that a rich man of my acquaintance was to be murdered or robbed by another, I ought to anticipate the event by committing the murder or robbery myself.

From what has been stated, let it not be understood that I am by any means an advocate for the Slave Trade. I only have made these observations, in order to prove an argument of inconsistency, or *ad hominem*, against its supporters. On the contrary, I have been in reality, successfully, gratuitously, and zealously, an advocate against it; I wish and hope for a speedy abolition of that traffic; nay, I even wish for some relief, if possible, to the brutes. There is indeed some reason to expect, even the last, as some authors have generously pleaded their cause; and, much to the honour of the age we live in, some regulations have been made, and even some judgments pronounced for protecting them

them from needless oppression and barbarity.

The police of some towns has very properly interposed to prevent the rashness of carriage-drivers; and I discovered from the newspapers, some time ago, that Lord Moleworth had brought to justice a drover, for using cruelly the poor animal under his charge; and that paper adds, "This is noticed as a proper example to all gentlemen who may witness such outrages: the proceeding is by taking the offenders before any of the justices of the peace *."

In the same paper for December, there is an account of a trial brought for this humane purpose; the prosecution is highly praise-worthy, although the verdict of the jury may not perhaps deserve commendation.

In short, it follows, I apprehend, from what has been stated, that those who contend

* See the Star for August 1793.

tend for the perfectibility of man, must, to be consistent, admit the injustice of human slavery and animal food. The last cannot be vindicated on any principle that does not support the former; and while the two are received into the system of civil society, it cannot possibly ever become perfect, but must remain in a state that merits a very, very different appellation.

Of Language.

AN universal language is not impossible. This has been often thought of. I read, some years ago, an essay upon it in the Memorials of the Academy of Berlin. The concurrence of learned and intelligent men in Europe might soon bring it into use and fashion ; and it is not improbable that this will happen sooner or later. Rousseau thought so.

Pitfcottie, in his history of Scotland, says, that James IV. placed a dumb woman, with two infants, in the island of Inchkeith, for the purpose of discovering what language they would speak ; and it was reported that they spoke Hebrew. The same experiment, according to Herodotus, was made by an Egyptian king, and with much the same success ; it being reported that the children spoke Phenician.

I am surpris'd that in this philosophic age, in which the origin of language has
been

been so much canvassed, that the experiment has not been properly made, it would not require much expence: till this be done, those who speculate on the subject ought to attend more than they have yet done to children and nurses. I had not read or thought much on the subject, when I had an opportunity of making such observations; but it appeared to me, that a child forms a vocabulary of its own, as soon as it can articulate. Nature prompts this. A child can not acquire the language it hears spoken without much trouble and time; but having need of many things which gesture cannot point out, it must use a number of different sounds, and of easy pronunciation. I remember very well to have remarked several instances of this.

I once heard an observation which struck me, that one effect of the French revolution would be, to put an end to the distinction between the court and country language. There was no such distinction, it was said, known to the Greeks and Romans. As far as I remember, in none of their dramatic, or other authors, is any person introduced

ced speaking a *Patois*, or provincial dialect, or using what we call low phrases; at the same time, as the difference between master and slave was greater than that between gentleman and clown now, it must have been very strange if they had not a citizen and slave language. That different places had different expressions, appears from Asinius Pollio's saying of Livy's style, that he perceived Patavinities in it*.

Mercier, in his *Tableau de Paris*, says, that the French Academy unhappily fixed the French language while in its infancy. If the language of a country ought at all to be fixed, it should seem, that it ought not to be done till it has arrived at a very high pitch of civilization, commerce, and knowledge; otherwise it will become necessary to use a number of circumlocutions, or foreign terms. It is unreasonable to find fault with a writer for using a word, because it has never been used before; for, though it perhaps has not

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yet

* Livy was born at Patavinum.

yet been English or French, if it ought to be introduced into either language, both writers and speakers should use it. Dubiety is not in Johnson's Dictionary; and I heard, many years ago, that surprise had been expressed in the House of Lords, on a Scotch Counsel's using it. Dubiosity is in his Dictionary, and yet the first seems to me the better word of the two. If, as some assert, there be no bounds to the perfectibility * of the human race, then no language ought to be fixed at any time, and indeed cannot be so.

It is commonly supposed, that coincidence in language proves a common stock; but it appears to me, that the proposition cannot be supported, if expressed in such general terms; for, it is only coincidence in structure and idiom that amounts to such proof, not coincidence in vocabulary. The French and English language coincide often in vocabulary: this proves that the two nations

* This is not an English word, and yet the idea cannot otherwise be expressed without a circumlocution.

tions have had much communication with one another; but it does not prove them to have had the same origin, because the idiom is quite different. However, it must be acknowledged, that every attempt to trace the origin of language is bewildering; and Rousseau himself acknowledges that it is above his comprehension.

and have had much conversation with
 another; but it does not prove them to
 have had the same origin, because the

of Dr Johnson's Style.

Dr Johnson never uses in his Poems the stiff
 pedantic stile, the *sesquipedalia verba*, that he
 makes use of in the Rambler, and his other
 prose works. His prosaic stile seems to have
 been formed on that of "Brown's Vulgar
 Errors:" it gives to a number of Greek and
 Latin words an English termination, and
 thus attempts to naturalise them, but in vain;
 the caprice of usage has rejected them, except
 in works of natural history and philosophy:
 I say caprice, for it seems impossible to assign
 any good reason for rejecting many of his
 words, and yet adopting others which are
 equally exotic. If it could be said with truth,
 that we had rejected these foreign words on-
 ly, for which we had equivalents in our own
 language already, it would then be obvious
 that we proceeded on some principle, but the
 fact is not so. Omnipotent, Dislocate, &c.
 words which are in the mouths of every bo-
 dy, are foreign words naturalised, for which
 we

we have already equivalents. Ablactate, with propriety, might not be adopted, because Wean is equally expressive and shorter; and, for the same reason Appropinquate, as we have already Approach: but why do we use Omnipotent and Dislocate, when we have All-powerful and Displace? It would be difficult to assign any reason for this, that ought not to induce us to adopt every word which is pretty and expressive.

Of Plagiarism.

COINCIDENCE in thought does, by no means, prove plagiarism to a certainty, but if accompanied with coincidence of expression, it does. The famous passage in *Tristram Shandy*, viz. "the instruments with which we kill a man, we gild them, we carve them, we inlay them; but the instrument by which we," &c. is copied, for it is a translation of a passage I have read, (I think in *Charron de la Sageſſe*,) but I cannot now find it.

The ſtory of the Clown, in *Gil Blas*, who imitated the pig, is to be found in *Phedrus*, V. 5.; and that of the Dog and the Cadi is in a collection of ſtories, in Latin, printed at Baſle in 1541; the title of which is, "*Convivialium Sermonum liber auctore Joanne Peregrino Petroſelano.*" *Le Sage*, indeed, tells it better, and has turned the prieſt, in the original, into a judge.

Many

Many authors, French and English, have been obliged to Charron without making him the least acknowledgment; among others, Mr Pope: *e. g.*

“The proper study of mankind is man.”

POPE.

“Le vrai etude de l'homme, c'est l'homme.”

CHARRON, ch. I.

See man for mine, replied a pamper'd goose.

POPE.

“Comme si tout n'avoit été fait et ne se remuoit que pour lui. En ce sens l'Oyson en pourroit dire autant.”

CHARRON, ch. VIII.

Of History and Poetry.

IF Mr Godwin's System, or even the Pacific Agricultural System, were to be adopted by nations, a great revolution must, of course, take place in the republic of letters.

It would nearly annihilate history, for that of a nation of husbandmen would not be much more interesting than Swift's Gazette of a Farm.

The alteration, however, though fatal to the historiographer and the hero, would be most beneficial to men in general; for the history of every country has, hitherto, proved a severer satire on the human race than any in Juvenal.

It would also put an end to Epic Poetry; that, indeed, seems already in a great measure

sure to have spent itself; but the French revolution may again set it a-going for some time. It affords a number of new topics, and such a genius as Lucan would suit it admirably. It probably will be attempted by poets in different countries.

I never could see any solid reason for making verse essential to Epic Poetry; nor when such poems are written in verse, for using the long one of ten syllables, that of eight would answer just as well. Nobleness of thought and expression, not length of verse, are necessary to grandeur and sublimity.

To have the power to forgive,
Is empire and prerogative;
And 'tis in crowns a nobler gem,
To grant a pardon, than condemn.

Would any word of addition to each of these verses improve them?

The length of the verse frequently obliges the poet to use a number of expletives, generally epithets, which may be left out without injuring the verse, which is then reduced

uu

ced

ced to eight syllables. Take, for example, the beginning of Pope's Translation of the Iliad.—

Achilles' wrath to Greece, the *direful* spring
Of woes unnumber'd, *heavenly* goddesses sing ;
That wrath which hurl'd to Pluto's *gloomy* reign
The souls of *mighty* chiefs untimely slain ;
Whose limbs unburied on the *naked* shore,
Devouring dogs, and *hungry* vultures, tore.

The six adjectives, or epithets, in italics, may be left out without injuring the sense, and the verses then become doggerel.

Achilles' wrath to Greece the spring
Of woes unnumber'd, goddesses sing, &c.

How different is the following passage in his Essay on Man !

Pride then was not, nor arts, that pride has made :
Man walk'd with beast, joint tenant of the shade ;
The same his table, and the same his bed ;
No murder fed him, and no murder clad.
In the same temple, the resounding wood,
All vocal beings hymn'd their equal god ;
The shrine, with gore unstain'd, with gold undrest,
Unbrib'd, unbloody, stood the blameless priest :

Heav'n's

Heav'n's attribute was universal care,
And Man's prerogative to rule, but spare.
Ah! how unlike the man of times to come!
Of half that live, the butcher and the tomb;
Who, foe to Nature, hears the general groan,
Murders their species, and betrays his own.
But just disease to luxury succeeds,
And ev'ry death its own avenger breeds;
The fury-passions from that blood began,
And turn'd on Man, a fiercer savage, Man.

In this passage there are but few epithets, and none of them expletive; there are three indeed in one line, but each of them is an argument. Pope is superior in this passage both to Ovid and Thomson, who have treated the subject, and very well too. This translation of the *Iliad* is, in truth, much superior to the original, with which I have often compared it in many of the most trying passages.

In the Preface to the fifth volume of Gronov. *Thesaur. Antiq.* there is a particular and curious account of the way and manner in which Pisistratus put together the poems called Homer's. It is taken from an unpublished Commentary of Diomedes Scholasticus, on the Grammar of Dionysius the Thracian.

cian. It is in substance as follows :—Pisistratus not being able to find the poems of Homer entire, but that one man had one hundred, another two hundred, and a third one thousand of his verses ; advertised over all Greece, that, whoever brought to him verses of Homer, should receive so much a line ; all who brought them received the promised reward, even those who brought lines which he had already got from others. Sometimes people brought him verses of their own for those of Homer ; these are now marked with an obelisk.

After having thus made a collection, he employed seventy-two grammarians, to put together the verses of Homer in the manner that they thought best, allowing them a handsome gratification. After each had separately arranged the verses as he thought best, he brought them altogether, and made each shew to the whole his own particular work. They having all in a body examined carefully and impartially, gave the preference to the compositions of Aristarchus and Zenodotus, and determined that the former had made the best of the two.

They

They were not deceived by the verses that were not Homer's; these were furnished merely to increase the number of lines and amount of the reward, but they marked them with an obelisk.

Christina, Queen of Sweden.

CHRISTINA was a very extraordinary character. Her father, the great Gustavus, who was killed at the age of thirty-eight, when she was an infant, ordered, by his will, that she should have a masculine education: this was unlucky, for she had too masculine a turn from nature: the consequence was, that she became *une femme savante*, in a very great degree. She would not hear of marriage; and, after eight years consideration, she abjured the protestant religion, resigned her crown, abandoned her country, and took up her chief residence at Rome, where she died in 1689.

She had the body of a woman, but the soul of a man; a bold, elevated, penetrating soul. In her Collection of Sentiments, there are several brilliant, singular, deep, and also some absurd thoughts: she used to say,
 “Communement on estime l’experience, &
 “les

“ les vieillards s'en glorifient: cependant j'en
“ fais peu de cas & je n'estime que le juge-
“ ment & l'esprit: Les affaires & les conjon-
“ tures sont comme les visages, aucune res-
“ semble jamais en tout et l'experience ne
“ sert qu'a faire des fautes, si l'on manque
“ d'esprit & de jugement*.” This is a very
judicious observation; a lawyer, who has
not got just principles of law and good sense,
will be very apt to misapply decisions in
quoting them, as being analogous to any
particular case; and, for the same reason,
inferences ought to be cautiously drawn
from precedents in any matter, and, at the
same time, drawn always with the great-
est circumspection: all circumstances must
be attentively considered, in order that one
may be quite certain that it is a case in point.

Christina likewise justly observes†, “ Il
“ faut plus de coeur pour s'exposer aux mal-
“ heurs du mariage, qu'a ceux de la guerre,
“ & j'admire le courage de tous ceux qui
“ se

* See Memoirs of Christina, Queen of Sweden, written
in French.

† Ibid. p. 41.

“se marient ; mais on fait ce terrible contrat comme tous les autres choses de la vie, dont on ne considère presque pas l’importance, ni à quoi l’on s’engage.” This is a very shrewd remark too ; and, accordingly it will be found, that, at a certain period of society, the number of batchelors increases.

The following remarkable observation shews what a fanatic she was before her death :—“ Quand Dieu nous auroit formés expres pour bruler eternellement comme des Tifons dans l’Enfer, il ne meritoit pas moins d’être aimé & adoré de nous*.”

One of Christina’s extraordinary actions, while she lodged in the King of France’s palace, at Fontainebleau, gave rise to a very curious question of general law.—She ordered an Italian gentleman, who was in her service, to be put to death in the *Chambre des Cerfs*, for having betrayed her, as she alleged,

* Ibid. p. 28.

ged, and apparently with reason. The priest, whom she sent to confess him before his death, expostulated with her on various grounds, and, among others, on her want of power: "Comment mon pere dit elle, moi
"qui doit avoir une justice souveraine & absolue sur mes sujets, je serois reduite a solliciter contre un traître domestique du forfait & de la perfidie du quel j'ai preuves en main ecrites & signées de la sienne propre*." Accordingly this gentleman was, at her desire, stabbed.

The king of France, however, did not relish this, and it is said that he consulted lawyers, and was advised, that she had power to do what she had done: the king accordingly, probably more from prudence and politics than from confiding in any such opinions, took no more notice of the affair, farther than shewing a coldness to Christina, which made her leave France.

xx

Several

* Id. IV. 7.

Several eminent lawyers of those days took up the question, and wrote treatises, some on one side, some on the other*; one of them, Tesmar, wrote in her justification, what he calls *Tribunal principis peregrinantis, sive, ex illustribus facti specie, disputata juris questio*; but others maintained with great force the opposite doctrine, and insisted that she had no right, she and her suite being only *Cives temporarii* of France. I am much inclined to think that she had no such power, (had she even still been a sovereign, which she was not,) because I think it is an established maxim in Law, as well as in prudence,

*Cum fueris Romæ, Romano vivito more,
Cum fueris alibi, vivito more loci.*

At least, clear it certainly is, that nothing ought to be done by a stranger openly, which is repugnant to the morality, laws, or religion of a state; and this obligation on a foreigner is implied on his entering a
strange

* Id. II. 2.

strange country, unless permission be previously obtained from the civil power, otherwise all kinds of the most infamous crimes might be committed with impunity in any state.

Christina, in justification of what she had done, lays down this maxim : “ Il faut punir dans la forme de la justice quand on peut, mais quand on ne peut pas, il faut toujours punir comme on peut.” From this strange remark, it would seem that she had perceived the force of the observation on which Helvetius insists so much : he says, “ Les passions sont le sel de la vie, on n’est heureux, ni mal heureux, qu’a proportion qu’on les a violentes.”

Tesmar, in his Treatise in support of the Queen, adds a qualification which seems to give up the question, that a sovereign, when travelling, must take two precautions ; “ que la punition ne se fasse que pour des cas bien graves & bien pressantes & en second lieu, qu’elle ne fasse sans éclat, et que le crime soit averé, ou du moins qu’il y ait de fortes presomptions a la charge

"du coupable *." But the question is a question of power. If there be room for these inquiries, it is not the travelling sovereign, but the sovereign of the place that has the power and the jurisdiction.

* *Memoirs*, p. 12.

SOCRATES.

It is clear enough, from Xenophon's Memoirs of, and Apology for Socrates, that his trial was occasioned by his wit, and his acquittal prevented by his vanity. We have Xenophon's own authority for the first proposition; for he relates an anecdote, from which it appears that a sarcasm of Socrates against Critias was taken very much amiss, and also the assertion of Socrates himself, on seeing one of his accusers pass by. (See the Memorab. lib. II. sec. XXXVII. and the Apology sec. XXIX.

Of the second, there is proof enough from his defence, the vanity of which is very disgusting. Xenophon says, it offended the judges much, and they interrupted him. He tells us, that he does not give all the particulars of the trial; and it is a pity he did not, especially the evidence brought against him.

Socrates,

Socrates, in the speech he made after his condemnation, complains of false witnesses having been adduced against him: be this as it may, Xenophon says, that he might have got off on paying a fine; but he would neither pay it himself, nor allow any of his friends to pay it for him; nor would he make his escape. He said, "It was better to die, than to languish in old age." But his real reason for chusing to die, seems to have been vanity.

Socrates was really a philosopher:—he was as good as he was brave, but he was a man. Vanity was his ruling passion. He saw, therefore, that his immortality depended on his being unjustly put to death.

This Rousseau seems to have perceived; for in a passage quoted by Mercier, in his book entitled "*Rousseau considéré comme l'un des premiers auteurs de la Révolution*," v. I. p. 31. he expresses himself thus:—"Si
"cette facile mort n'eut honoré sa vie, on
"douterait si Socrate avec tout son esprit,
"fut autre chose que sophiste."

The

The speech which Plato makes for him after his condemnation is much superior to that in Xenophon; and indeed Plato gives one quite a different picture of him in every respect. I neither loved nor admired Socrates on reading Xenophon, but I did on reading Plato's *Apology*: the detail of his death, with which Phædo concludes, is very affecting.

Mr de Paw, in his *Rech. Philos. sur les Grecs*, quotes a passage from an oration of Æschines, in which he tells the Athenians, in so many words, that they had put Socrates, the sophist, to death, because he had been the tutor of Critias one of the thirty tyrants who overturned the democracy. Æschines certainly says so; and it is strange he should have said so, if it had not been the fact; but it is as strange, that the apologists of Socrates should have omitted this circumstance had it been true.

*A DISSERTATION to prove that TROY was
not taken by the GREEKS.*

Printed in the TRANSACTIONS of the ROYAL SOCIETY in 1788,
with additional notes and observations, by the Author.

Quos neque Tydides, nec Larissæus Achilles,
Non anni domuere decem, non mille carinæ.

VIRG.

It cannot well be disputed, that, till the Greeks were possessed of the art of writing, they could have nothing that deserved the name of History. When that art was introduced among them is uncertain; but there is reason to believe it was not known to them at the time of the Trojan war, as there is no mention of any writing in all the works of Homer; for the tablets, of which he speaks in one passage, did not contain
any

any writing, but only marks or signs *. At any rate, it cannot be supposed, that writing was much known or practised at that time, or indeed for long after. It appears from many charters, and other deeds, in this country, that men of the first families and fortunes in it could not, a few centuries ago, write their names; and yet it is clear, from our having the use of coined money in commerce, and of cavalry in war, as well as from several

* Iliad. vi. 168. So Eustathius says expressly; and the reason he assigns is, that letters were the invention of later times. He might have added, that it appears from several other passages in Homer, that with him *γραψιν* does not signify to write, but to trace or mark; nor *σημα* a letter, but a mark, or sign, or credential. Iliad vii. 175. 187. 188, 189.; and Odyss. xxiv. 328. And *σημα* has unquestionably this signification in xxiii. 206. In this passage respecting *Bellerophon*, had Madame Dacier and Mr Pope adverted to this, they would not have translated this passage as they have done. *Ποτε δὲ οἱ σημαῖα λυγρεῖ*, clearly means, that he gave him a token or credential that was meant to be destructive to him; and *γραψας θυμοφθορὰ πολλὰ*, that he traced (in these folded tables) many marks, or signs, to shew that he was desirous of his death. There is, likewise, no mention of writing in the *Æneid*; which shews, that Virgil thought it the invention of later times.

several other circumstances, that we were more civilized in those days than the Greeks could pretend to be when they first invaded Asia.

Those, therefore, of the Greek writers who chose to relate ancient events, might shape their stories as they pleased. There could be nothing to contradict them, but a vague and confused tradition, (if there was so much) which, it is plain, would at no time be much regarded, and would soon be forgot or disbelieved, if the accounts of these writers were more flattering or favourable to their countrymen. Indeed the Greeks seem all along to have had a natural inclination to pervert and falsify facts, and this drew upon them the severest reproaches from the lovers of truth.

*Quicquid Græcia mendax
Audet in historia.*

It may, perhaps, be said, that this is no more than the assertion of a Roman satirist, which ought not to be listened to. But it is easy to support Juvenal's testimony by that
of

of some of the most judicious Greek writers themselves. Diodorus Siculus informs us, that the ancient historians contradicted one another so much, that those of later times, who felt they had talents for writing history, abandoned all remote, and betook themselves to recent periods*: and Thucydides shews, that not only with regard to ancient, but even as to recent events, the Greeks, his contemporaries, were very ill informed. In his introduction, he expresses himself as follows:—"It is very difficult to find out the truth as to ancient affairs; for men content themselves with reports as to past events, without being at the trouble to examine them, even though they relate to their own country." And he refers, for proof, to the celebrated story of Harmodius and Aristogiton. Of this he gives the detail in his sixth book; "Because neither the Athenians, nor others, knew who was the tyrant at the time, or what was the real fact that happened." Poems had been com-
posed,

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* Lib. IV. initio.

posed, and statues erected, in honour of those men, as being the champions of liberty, and the deliverers of their country, by a bold stroke, in putting its tyrant to death; but it appears, from the narrative of Thucydides, that all this was undeserved, and proceeded from a gross mistake: for they did not kill Hippias, who was the tyrant, but his brother Hipparchus; and him, not from a love of their country, or hatred of tyranny, but from very unworthy motives, which it would be indelicate to explain*.

If the Athenians, (the most enlightened people of Greece,) could be so misled as to an event which happened but eighty-two years before the Peloponnesian war, what liberties might not Homer take, in relating the circumstances of an expedition which preceded, by many centuries, the age in which he lived, and as to which, in all probability, there was no record or writing whatever?

It

* It took its rise from *παιδεία*. Thucydides says Aristogiton *εἶχε αὐτὸν*.

It is, indeed, supposed by the author of the life of Homer, commonly ascribed to Herodotus, that he was only 168 years later than the Trojan war; but, from what Thucydides says, it should seem that he thought he was long posterior* to it; and that, in fact, he was so, is apparent from several passages in his works. In one place, he says, that Diomede lifted, brandished, and threw a stone, which two men, such as men are now a-days, would not be able to carry: and, in another, that Hector lifted, brandished, and threw a stone, which two men, such as men are now a-days, would not be able to heave from the ground into a cart. But so great a degeneracy could not have happened in a century and a half; besides, that he wrote from report, and knew nothing certain, he himself declares, in his address to the Muses, with which he introduces the catalogue of the Grecian ships and forces; which implies, that he was not only very long posterior to the event he chose for his subject,

* Πολυ ὑστερον.

subject, but that there was no record or history of it extant when he wrote.

Many proofs might be brought of Homer's story being generally disbelieved or doubted of among the ancients. A few shall be mentioned: And, first, I refer to the history of Helen's birth.—Læda, the wife of Tyndarus, was delivered (it is said) of two eggs, in one of which were Pollux and Helen, in the other Castor and Clytemnestra. The former being the offspring of Jupiter, metamorphosed into a swan, were immortal; the latter, coming from Tyndarus, subject to dissolution. And it is added, that, when Castor drew near his end, his brother begged of the gods that he might be exempted from death as well as himself. This, it seems, could not be altogether complied with; but, to gratify him as far as fate would permit, it was decreed that they should live and die by turns. This is evidently an allegory, and generally thought to be an astronomical one. Now, if Helen was not a real, but an allegorical personage, what becomes of the Trojan war?

The

The story of the egg is not to be found in Homer; but the alternate life and death of Castor and Pollux is mentioned in the *Odyssey**, though not consistent with a passage in the *Iliad*, to be afterwards quoted, which declares them both dead. Madame Dacier, in a note on this passage of the *Iliad*, says, that the fable of Castor and Pollux was posterior to Homer; but the passage of the *Odyssey*, just now referred to, proves the contrary. Horace seems to have thought, that the whole had been invented before Homer's time, as he commends him for not having begun with the egg:

Nec gemino Trojanum bellum orditur ab ovo.

But there would have been no place for the compliment, if he could not have committed the fault. Be that as it may, the allegory is certainly of a very ancient date, and proves, that the authors of it did not believe Homer's account of the Trojan war. Indeed

* xi. 302.

deed it goes further : it proves, that they did not believe there had been a Trojan war at all ; in support of which opinion, much may be, and has been said*.

2dly, It is clear that Herodotus disbelieved, or very much doubted the Greek account of the Trojan war. That very intelligent and inquisitive historian informs us†, That he asked the Egyptian priests, whether what the Greeks alledged to have happened at Troy, was *a foolish story*‡? And he says they told him, that Paris and Helen, in their passage from Sparta to Troy, were overtaken by a storm, which drove them to Egypt, where some of their servants having disclosed the crime that they had committed, Proteus, who then reigned at Memphis, seized and detained their persons, and the effects which they had brought with them : That when
the

* See Pernety's *Fables Egyptiennes et Grecques dévoilées*, tom. ii. and that the history of the Trojan war was no more than an allegory, is taken for granted by Gebelin de la Cour, in his *Monde Primitif*, ii. 400 ; and by Bryant, in his *Mythology*. † Lib. 2. ‡ *Ματαιος λόγος*.

the Greeks came before Troy, and demanded back Helen and her effects, the Trojans answered, that they had neither, both being in Egypt; but the Greeks, not believing this, besieged the town, and took it; and then Menelaus, finding that what they had said was true, proceeded to Egypt, where his wife and goods were restored to him. Herodotus then quotes several passages of the Iliad to prove, that Homer knew Helen was not in Troy, but in Egypt, and had perverted the fact for the sake of his poetry. He adds, that he, too, subscribes to what was said with regard to Helen's not being in Troy, for this reason, that it was impossible to believe Priam so devoid of understanding, as that he would have exposed his kingdom to destruction for a woman, if he had had her to deliver up.

This is a very curious passage. It proves clearly, that Herodotus, before he conversed with the Egyptian priests, doubted extremely of the account given by the Greeks of the Trojan war. He seems, however, to have altered his opinion, in consequence of what they told him Menelaus had reported when

he came to Egypt. That account, if true; removed, no doubt, the chief difficulty he had, which was, the incredibility of Priam's refusal to restore Helen, when demanded by the Greeks; but, if he had reflected a little, he must have been satisfied, that it could not be true that Helen was not in Troy during the siege. If she had not been there, it is impossible to believe that the Greeks would not have discovered this in less than ten years. They must very soon have come at the fact. When they did, they would have retired, if the recovery of her and her effects was the object of the war. Or, supposing that the hope of plunder would have made them continue it, yet Menelaus surely would have gone for her to Egypt himself, or, at least, sent some person thither to enquire about her. Indeed, the assertion of the Trojans was, of itself, sufficient to have induced him to take that trouble. This has been remarked by Riccius*, who justly maintains, that Homer's story, as to this point, is the more credible of the two: "*Quis vero non videat,*

* Dissert. Homer. vol. ii. diff. 40. p. 216.

“videat, magis præ se ferre speciem fabulæ
“id quod narrabant sacerdotes, quam quod
“habet Homerus; estne, quæso, verisimile
“in ea ambiguitate perdurare voluisse Græ-
“cos decem annos? Cum recipiendæ Hele-
“næ tam esset cupidus Menelaus, non mit-
“teret statim aliquos in Egyptum qui ex-
“quirerent, an vere apud Proteum illa deti-
“neretur? Non id omnino faciendum cen-
“ferent frater Agamemnon supremus copia-
“rum imperator, Nestor aliique duces? Quæ
“major absurditas, quæ insignior impruden-
“tia, quæ crassior stoliditas de Græcis duci-
“bus virtute et consilio celeberrimis consingi
“unquam possit?”

Several ancient authors thinking it impro-
bable that Helen was in Troy, and seeing the
force of the argument against the supposi-
tion of her not having been there, contrived
a fiction to reconcile the two accounts, viz.
That Venus had created a shape, or figure,
so exactly like Helen, that Paris carried the
counterfeit* with him to Troy, believing it

ZZ 2

to

* Εἰδωλον.

to be the celebrated Beauty herself: Euripides's tragedy of Helen turns entirely upon this; and Musgrave, in his notes, conjectures, that the story had been contrived by Helen, in conjunction with the Egyptian priests, to re-establish her character after her return to Greece. It is plain, however, that, according to the Egyptian priests and Herodotus, Homer has falsified the story in one material circumstance; if so, it is impossible to say where he would stop.

3dly, Although Thucydides, in his introduction, does suppose the truth of the Grecian expedition against Troy, and refers to Homer for several particulars, yet he once and again enters the caveat, "if any credit is to be given to his poems."

Lastly, Pausanias says, in so many words, that he gives more credit to Homer than the *generality* of people do. The expression in the original* is rather stronger; and it is certain, that several ancient authors, whose
works

† 'Οι λοιποί, p. 160. edit. 1696.

works unfortunately have not reached us, arraigned Homer of falsehood, in treatises written on purpose to convict him of it*. I will not quote from Lucian, as his levity might be objected to, but only observe, that, if the common chronology be just, he had good reason to laugh at the supposition of Paris falling in love with Helen, or of her being an object of contention to Asia and Greece, as it is demonstrable that she must have been about an hundred years of age when Troy was taken ; for, according to the common chronology, seventy-nine years elapsed between the Argonautic expedition and the taking of Troy ; now she was the twin-sister of Pollux, who was one of the Argonauts, and who fought and beat a famous boxer in the passage to Colchis, and therefore cannot be supposed, at that time, under eighteen or twenty. Bayle, in his dictionary, has taken notice of Helen's great age ; and a witty author has compared her to the famous Ninnon de l'Enclos, who made an assignation on the

* See an enumeration of them in the preface to Philostr. *Heroica*, p. 603. edit. 1709.

the day ſhe entered her eightieth year. But this ridicule ſtrikes only againſt the common chronology ; for Homer ſays nothing to aſcertain the period of time that elapſed between the two expeditions. From a circumſtance, however, which he does mention, and which will be taken notice of by and by, it appears, that ſhe could not be under forty when Troy was taken.

After what has been ſtated, I may venture, I imagine, to proceed with leſs timidity than I otherwiſe could have done, to endeavour to ſhew, that the account given by the Greeks of their expedition againſt Troy is incredible and inconſiſtent with itſelf ; and that (if ever there was at all a Trojan war) Troy was not taken by them, but that they were obliged, by thoſe who defended it, to raiſe the ſiege, and retire with loſs and diſgrace.

Several of the arguments to be urged in the ſequel upon this ſubject, are taken from a very curious diſſertation by a Greek author, Dio Chryſoſtomus, who lived in the time of Trajan, and acquired great reputation from his works, on account of the purity

ty of his style, and the elegance and depth of his sentiments and reflections. He has writtentwo dissertations upon Homer; in one of them*, he makes his panegyric as a poet: but, in the other†, takes him severely to task as an historian. The first mentioned, which is in praise of the poet, is taken notice of by almost every commentator who has published an edition of his works; but not one of them makes the least mention of the other. Hence it is not much known.

This last may be divided into two parts. The first part contains an account of the Trojan war, quite opposite, in most particulars, to that of Homer; and this, Chrysostom says, he made up, partly from information, which he too pretends to have obtained from an Egyptian priest, and partly from what appeared to him to be most probable. The other, and by far the most valuable part, is an argument to prove, that Homer's account must appear, when examined with attention, to be false, absurd, and contradictory to itself.

* Orat. lv.

† Orat. xi.

self. As the detail which Chrysoſtom gives is not vouched or authenticated in any ſhape, I ſhall ſtate no more of it than is neceſſary for underſtanding the argumentative part of his diſcourſe, which merits the greateſt attention. Caſaubon, who writes ſome notes on this author, ſays of this diſſertation;—
“Dignus plane liber hic, quem legant philologi, et quicunque in veterum ſcriptis cum
“judicio cupiunt verſari; quamvis et pro
“Homero multa dici poſſunt.”

It is not, however, my intention to tranſlate this part of the diſcourſe, nor even to abridge it; but only to ſelect from it the arguments that appeared to me the moſt concluſive and ſtriking, to enforce them by ſome additional conſiderations, and to add ſome obſervations that have occurred to myſelf in reading and reflecting on this important and intereſting article of ancient hiſtory.

According to this author, Helen, the daughter of Tyndarus, king of Sparta, was, by far, the moſt beautiful woman of her time, and had a great number of ſuitors, amongſt whom were Menelaus and Paris. The latter was
pre-

preferred by the lady to all the rest, on account of the graces of his person and address; and his magnificent presents obtained the consent of Tyndarus, her father, who, besides, was desirous of connecting himself with Asia.

Upon this, Menelaus, and the other Greeks, partly from resentment of the affront which they thought they had received, and partly from the hope of plunder, invaded Troas.

Many auxiliaries came to the assistance of Priam, and an obstinate and bloody war ensued, in the course of which great numbers fell on both sides; but the Greeks had all along the worst of it. They lost a great number of troops, and some of their bravest commanders. Hector, according to this author, instead of being slain by Achilles, himself slew both Achilles and Ajax; though Homer, to cover this disgrace, has made the former, who was the bravest of the Greeks, perish by the hand of Paris, the most dastardly of the Trojans; the latter by his own. At last, after suffering an infinity of hardships

and losses, the Greeks were glad to retire as they best could. He gives a very long detail of the war; but, for the reason already mentioned, I enter not upon it, but proceed to the real evidence he offers of the falsity of the common story.

In considering this matter, it will be proper to view the circumstances and situations of persons and affairs, as at four different periods: 1st, Before the voyage of Paris to Sparta. 2^{dly}, As at the time of his arrival there. 3^{dly}, During the war. And, *lastly*, After the taking and sacking of Troy.

It is by no means probable, that Paris would fall in love with a woman whom he had never seen; and still less so, that he would form the desperate and nefarious project of carrying her off from her husband, a powerful king, who lived at a considerable distance, and beyond seas.

Chrysofom might have added, that the force of this objection was foreseen; and that, to obviate it, was invented what is called the *judgment of Paris*; for it was not the shepherd
of

of Ida that conceived this plan ; he was put upon it by Venus, who promised him success in reward of his having adjudged the apple to her.

But further, Paris could not get a ship or a crew, without the consent or connivance of his father ; yet it cannot be believed that Priam, an old, wise, and good king, would give any countenance to such an undertaking.

Let it be supposed, however, that Paris, somehow or other, got a ship and crew, and arrived at Lacedæmon, when Menelaus and her brothers were absent, (for it is surely necessary to send them away ;) and let it be still further supposed, that he had been able to persuade her to forsake her husband, her child, and her country, and to follow, to her own eternal disgrace, a young adventurer to a strange land ; yet still unsurmountable difficulties stood in the way of his carrying her off. For, it must be observed, that Lacedæmon was not a sea-port town, but a mediterranean place, being many miles up the country, as appears from the map ; and fur-

ther, that Paris did not only carry off Helen, but her effects, which consisted in bulky goods, such as, wearing apparel, carpets, tapestry, and vessels of different kinds. It was impossible, therefore, for Paris to carry her off secretly. He must have done it openly and avowedly, and in the face of the sun; and a number of horses and carriages were necessary to transport the lady and her baggage from Lacedæmon to the sea-port. Now, supposing Menelaus absent, is it possible to believe that his subjects would have sat with their arms across, and beheld the wife and the wealth of their king carried off by a handful of banditti?

It is not easy to figure a tolerable answer to this objection. The author of one of the spurious histories of the Trojan war, in Latin, felt its force, and, to avoid it, pretends, that Paris met with Helen in the island of Cythera, near the coast of Sparta. But this is inadmissible; for, in the *first* place, Homer expressly says, in a variety of passages, that Helen was brought from Lacedæmon to Troy; and, *2dly*, That not only she, but all her valuable effects were carried off; and she

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certainly would not have these with her, when upon an excursion to an island in the neighbourhood.

We come now to the period of the war. It is very surprising that the Trojans did not deliver up Helen to the ambassadors sent from Greece; as the demand was not only founded in justice, but enforced by the threat of an invasion. It is still more surprising, that they should persist in their refusal, when they saw themselves attacked with 1200 ships and 100,000 men. What is most astonishing of all is, that they did not restore her upon the death of Paris, but married her to his brother Deiphobus. Here Chrysostron argues, and with great plausibility, that this is perfectly incredible, upon the supposition that Paris had possessed himself of her by a crime; but by no means so if he obtained her in marriage with her father's consent; for then the grossest injustice was on the side of the Greeks; and it is not at all surprising, that the Trojans should have been willing to suffer the last extremities rather than submit. This last supposition is further confirmed by this circumstance, that Castor and Pollux, the
bro-

brothers of Helen, did not go upon this expedition, though they both were alive at the time of her pretended elopement*.

Ten years elapsed, after the elopement of Helen, before the Greeks laid siege to Troy. This we learn from her lamentation over the dead body of Hector; for there she is made to say expressly, that she was now in the twentieth year of her absence from her native country†; and, as it is agreed that the siege of Troy lasted ten years, it follows, that the same period had elapsed from her being carried off to the landing of the Greeks in Asia. This circumstance Chrysostom has overlooked; but it seems to deserve attention. So long a delay cannot well be accounted for.

The scholiast, upon the above passage, who seems to have foreseen the observation, says, that this time was spent in assembling the Grecian army; but as the Grecian princes lived

* Il. iii. 236.

† Il. xxiv. 765.

lived at no great distance from one another, and all their men were accustomed to the use of arms, it could not be difficult to bring them soon together; and, if it be supposed that they came to the place of rendezvous at different times during this long period, it is not easy to see how they could be subsisted; besides, it cannot be doubted that her relations, and especially her husband, would hasten the invasion as much as possible.

At this rate, the beauty of Helen must have been upon the wane when the siege began, and quite over by the time it ended. For which reason, Mr Wood, in his *life of Homer*, regrets that this circumstance was introduced into his poem, as it is far from being agreeable, and not at all material. He might have added, that it is not consistent with the excessive encomiums which even the old men of Troy bestow on her charms, in the tenth year of the siege; or the extravagant compliment they pay her, that it was not at all surprising the Greeks and Trojans should have suffered so much and so long for her. The probability is, that this circumstance was invented by Homer to give an air of credibili-

ty

ty to some others ; particularly, to account for the absence of Castor and Pollux. In the third book of the *Iliad*, Helen expresses great surprize because she did not see her two brothers among the Grecian commanders. This was in the tenth year of the siege ; and Homer adds, " But they had both died at Lacedæmon a long time before." This proves they were alive at the time of the elopement ; and that he thought it necessary to account for their not being at the siege.

The Greeks, however, did at last make their appearance before Troy ; but the town was not taken till after a ten year's siege*.

This

* M. Fourmont, in a dissertation, in tom. 5. *des Mem. de l'Acad. des Inscrit.* pretends, that the siege began only three weeks or a month before the quarrel between Agamemnon and Achilles, which happened in the beginning of the tenth year ; and that the rest of the time had been spent in expeditions against different places in Asia. M. Fourmont says, unanswerable objections may be made to Homer's account on the other supposition. The Abbé Banier has written an answer to this dissertation, in which he proves, from several passages in Homer, that the siege lasted ten years ; but has been by no means able to answer the objections that arise from that supposition. See tom. V.

This is the most puzzling circumstance of all; especially when it is considered, that Homer tells us, that it had been taken formerly by Hercules with only six ships, and had, by him, been levelled to the ground.

The Greeks, by Homer's account, were always greatly superior in numbers to the Trojans and their auxiliaries; and, for more than nine years, they had Achilles with them*, whom Homer has, on all occasions, represented as perfectly irresistible to the Trojans. How then came it about that the war lasted so long?

The only answer that can be made to this is, that the Trojans kept within their walls as long as Achilles appeared; and this Homer himself suggests†, though it is contradictory to several other passages, where it is said, that many battles had been fought, and great numbers slain on both sides.

3^B

But

* Il. viii. 558.

† Il. vii. 352; xviii. 287.

But this will not prove satisfactory, when it is considered that Andromache, in the interview she has with Hector in the sixth book, tells him, that the city was to be come at, and the wall easily scaled*; and that Ajax, Agamemnon, Menelaus, and Diomed, had three times attempted it. If so, what hindered Achilles to storm the town the day after he landed? How came Ajax, and the other chiefs, to be so long in threatening an assault? Madame Dacier, in a note on this passage, says, That the art of reconnoitering was not known, at this time, even to the Greeks. The absurdity of the answer shews the force of the observation. A wolf, fox, or other beast of prey, that wants to get into a fold, or close, where sheep or cattle are confined, would walk round it to discover at what place the fence was lowest †.

But

* Il. vi. 434.

† Herodicus, quoted by Heraclides Ponticus, whose treatise is in Gale's *Opus. Mytholog.* p. 424, says, it would have been absurd in the Greeks to have laid siege to Troy till the tenth year; as they knew from the prophecy of Calchas, (Il. ii. 322.) that it was not to be taken till the tenth year; they, therefore, went up and down plundering the rest of the time.

But further, supposing the town to have been impregnable, how came the Greeks not to take it by blockade? They had a powerful fleet, the Trojans none; so that it was easy to hinder the town from being supplied with provisions by sea; and it was equally easy to have drawn lines around it, which would have cut off all communication between it and the country; the infallible consequence of which would have been, that the Trojans must have surrendered as soon as their stock of provisions was consumed. As the Greeks did not draw lines around the town, whilst, at the same time, we are told, that they threw up a rampart before their own ships, and as the Trojans received succours from their neighbours at different times, the fair conclusion is, that the Greeks were not masters of the country, nor superior to the Trojans in the field, but, on the contrary, found themselves overmatched. If it shall be said, that the art of drawing lines was not known to the Greeks, I answer, that the method they took to secure their ships proves the contrary to be true; and, had they been ignorant of that art, (if so simple an operation deserves that name,) they never would have thought

of the siege, as they had no artillery or machinery of any kind for making a breach in the walls: besides, without any art or labour, they could have placed bodies of troops so as to intercept all the Trojan convoys.

Homer admits, that the Greeks suffered more before Troy than any mortal man could relate*: That they lost a great number of men, many excellent officers, and that Ajax, Antilochus, Patroclus, and Achilles, the greatest hero of them all, perished in the expedition. This, of itself, affords a presumption that they were not successful. It is very improbable that Achilles fell by the hand of Paris; the truth seems to be, that he died by that of a better man. Hector possessed himself of his armour, which is not at all surprising, if he slew its owner; but cannot otherwise be explained: for, as to the story of Patroclus dressing himself in the armour of Achilles, and being slain and stripped by Hector, it cannot possibly be true. Achilles was by far the strongest and stateliest

* Odyss. iii. 105.

stateliest of the Greeks: Hector was nothing to him; and Patroclus again was nothing to Hector, as is evident from the anxiety with which Achilles charges him not to encounter Hector. Now, when Hector did get Achilles's armour, he found he could not use it; and therefore Homer* makes Jupiter interpose to fit it to his body; though, after all, the god did not perform the work sufficiently; for Hector owed his death to fighting Achilles in that armour, as an aperture still remained near the throat, through which Achilles drove his spear. If then the armour of Achilles could not be used by Hector, how is it possible that it could be used by Patroclus, who was so much inferior to him? It is palpable, that he must have been almost as ill fitted with it as David was with Saul's. Homer himself admits†, that Patroclus could not wield Achilles's spear; how then could he support, not to say march and fight, under the load of his armour?

It

* Book xvii. 210. † Il. xvi. 140.

It cannot be denied, that Achilles fell during the siege; and it is evident the Greeks must have been less able to take the town, after this and their other losses, than before. Accordingly it is admitted by Homer and his followers, that they did not take it by *force*, but it is pretended that they took it by stratagem. Homer's account of which is precisely as follows*: Epeus made a wooden horse, into which Ulysses and the Grecian chiefs went with a body of troops; the rest of the Greeks burnt their tents, and set sail. Upon this, the Trojans came down, and, along with them, Helen. She, attended by Deiphobus, went three times round the horse, calling each of the Grecian leaders by his name, and mimicking the voice of his wife. This made them all, except Ulysses, desirous to get out, or return an answer; but he restrained them, and clapped his hand on the mouth of one of them, who was more eager to speak than the rest, and kept him gagged in that manner till Helen retired. The Trojans then drew up the
the

* Odyss. viii. 500.; iv. 271.

the machine to their citadel, and held a consultation as to what they should do with it. Some were for cutting it up; some for precipitating it from the rock; but others thought that it ought to be allowed to remain as a propitiatory figure. This last opinion prevailed, and the Greeks came out of it, and, after an obstinate struggle, vanquished the Trojans, and plundered the town.

The absurdity of all this is too gross and glaring to need refutation. Virgil saw well the objections to which it is liable, and, to obviate them, has strained his invention to the utmost, but in vain. According to him, this horse was huge as a mountain*; and it was necessary it should, as it was to contain an army in its belly. It fell to the lot of Ulysses, Menelaus, Neoptolemus, the maker Epeus, and five other leaders, to enter this machine; which they did, with a body of armed men that filled it. The rest of the Greeks sailed to Tenedos, which was in
fight *,

* *Æneid.* ii.

fight*, and there hid† themselves on the desert shore. The Trojans, thinking them gone for good, came down, and consulted about the disposal of the horse, as is mentioned in Homer. But upon Laocoon, who opposed its introduction into the city, being devoured by two serpents, they put wheels to its feet, and ropes to its neck, and drew it up to the town, through a breach made on purpose in the wall. The Greeks at Tenedos returned at midnight, having the benefit of a bright moon-shine; and those in the horse having descended by means of a rope, opened the gates to them, and the Trojans, being buried in sleep and wine, were easily mastered.

Every person who reads this, with the least attention must perceive, that Virgil had better have couched the story in general obscure terms, as Homer does. By being particular, instead of bettering the matter, he makes it worse; and there is one striking incongruity, into which it is astonishing

* In conspectu.

† Conduct.

tonishing he should have fallen. Tenedos, he says, was in sight; and, no doubt, it was; for its distance from the Trojan shore is but forty stadia, or five miles: it was a bright moon-shine, and Troy stood on a hill; how then could a *great* army be *bid* from the Trojans on a *desart* shore*? At any rate, it is impossible that 1200 ships could be concealed from them. They must have seen the fleet at least. If so, it cannot be believed that they would have made a large breach in their wall when the enemy was so near. But it would be improper to dwell longer here. Since the town, it is admitted, was not taken by force, and since the stratagem by which it is alledged to have been taken is absurd and impracticable, the fair conclusion is, that it was not taken at all; and that we should have read the repulse of the Greeks in verse, if time had not envied us the works of the poets of Troy.

Let

* It might; for Tenedos is extremely elevated: so Mr Chevalier told me long after I wrote this paper, and he had been upon the spot, so that this argument flies off. See his map of Troas.

Let us now see what happened, according to the Greek writers, after Troy was, as they pretend, taken and sacked. If the Greeks had been in reality victorious, it is natural to suppose that they would have returned home in a body, in good order, observing due discipline and obedience to their General. But, instead of doing so, Homer tells us*, that they quarrelled among themselves, differed about the course they should steer; that some went one way, some another, and that several were shipwrecked.

But this is not all: if the Greeks had been, in reality, victorious, those who returned would have been received as conquerors, with open arms by their families, and with acclamations by their subjects. But the reverse of this confessedly happened. Agamemnon, their captain-general, upon his arrival, was slain in his own house by a villain who had debauched his wife in his absence. Would such have been his fate had he appeared at the head of an army of conquerors? And
not

* Odyss. iii. 136.

not only was he himself slain, but, according to Homer, all those who returned with him: yet this exploit was performed, he says, by Ægisthus, with no more than twenty men; and he reigned seven years in Agamemnon's stead *, till he was assassinated, in his turn, by Orestes. Diomed was soon driven from his country, and Neoptolemus from Peloponnesus; and, according to the account of the former in Virgil, all who were concerned in the expedition against Troy were dispersed over the earth, and suffered every where remarkable hardships and distress,

Vel PRIAMO miseranda manus—

Æn. xi. 259.

The wretched situation in which Ulysses found his affairs at home is described, at great length, in the *Odyssey*, by Homer himself. But unless it had been well understood that the affairs of the Greeks before

3 C 2

Troy

* Ibid. iv. 530.

Troy were desperate, no set of men would have dared to have possessed themselves of his house, insulted his wife, and devoured his substance, as he could have returned and punished them in a few days; for we learn from Homer* and Herodotus†, that the passage from Troy to Pthia and Sparta could be performed in three days, and Ithaca was not much farther off. This circumstance renders it perfectly incredible, that Ulysses and Menelaus should have been long in finding their way home, as both were, according to Homer.

On the other hand, let us take a view of what (it is supposed) happened to some of the Trojans after the pretended capture and destruction of their town. Æneas sailed with twenty ships, and a great number of people, to Italy, where he obtained a very good settlement indeed for himself and his followers. So did Antenor: and, what is still more wonderful, Helenus goes and occupies a part
of

* Il. ix. 663.

† Lib. ii. c. 117.

of Greece, establishing himself in Epirus. It certainly never was before heard of, that a conquered people sent out colonies to take possession of part of the country of its conquerors*. Which ever side of this question be taken, it is clear, that no faith ought to be given to poetical history ; and, indeed, it is absurd to seek truth in the works of men, whose province is fiction.

I could offer many more circumstances and considerations in support of my proposition, partly from Chrysostom, (whose excellent dissertation I have by no means exhausted,) and partly from what I have noted myself in the course of my researches on this question ; but were I to do so, this paper

* Such is the account given by Virgil, Dionysius Halicarn. and others ; and it is generally followed. But it must be observed, that Homer says nothing of Helenus's settlement in Epirus, or of Æneas's in Italy. On the contrary, he says, that Æneas and his descendants reigned over the Trojans. See Iliad, and Wood's Life of Homer. This, however, seems as little reconcileable to the Greek account of the capture of the city as the other.

per would swell to a treatise: besides, I have said enough, I imagine, to undeceive men as to this matter; at least, enough to make them think upon it with attention and impartiality; which, if they do, I have no doubt that they will very soon undeceive themselves*.

To

* Some glimmerings of the truth, as to the issue of the Greek expedition against Troy, seem to have penetrated all the clouds of misrepresentation with which Homer and other Greek authors have endeavoured to cover it.

Several ancient writers admit, that the Greeks were once repulsed from Asia, and returned to Greece. See Pindar. Olymp. Ode ix.; and Benedictus' Commentary. Strabo lib. i. &c.

This miscarriage was ascribed to their landing at first (from a mistake in geography) not in Troas, but in Mysia. The king of which country, it is said, engaged and beat them. But that will not pass. It cannot be believed, that of one hundred thousand Greeks, not one had ever before made the short voyage from Greece to Troas. But the matter does not rest upon presumption: Homer expressly says, that two of their chiefs, Menelaus and Ulysses, had been there on an embassy before the expedition; consequently, they could not mistake the way: besides, supposing that they had gone wrong, why fight the king of Mysia, or why land at all? They must have learned their error from the first fisherman or peasant they met;
after

To conclude: as it is a matter of indifference to us, now a-days, whether the Greeks or Trojans prevailed, there is no reason why the foregoing argument should be read with dislike or regret: on the contrary, it is the favourable side of the question; for, if it lessens Achilles, who had nothing but personal courage and strength to recommend him, it exalts Hector, whom his enemies admitted to be the best and bravest man of his nation; and, above all, it does justice to Helen, the finest woman of antiquity, by restoring to her that character of which poetic calumny has too long deprived her.

Fortunati ambo! si quid mea carmina possunt.

Æn. ix. 446.

after which they had no more to do than to steer for the place of their destination. This is observed by Philostratus, p. 697.

FINIS.



ERRATA, VOL. II.

Page line

9. l. 10. (in some copies) *for* if they, or one of them, do,
read if they do
15. l. 22. (ditto) *for* Groneguen, *read* Gronewegden.
- id. note, (ditto) *for* n. 19. *read* f. 19.
51. l. 18. *for* in civil actions, *read* into civil actions
67. l. 15. *for* a *fortiore*, *read* a *fortiori*.
76. l. 4. notes, *for* conscios, *read* conscios.
97. l. 5. *for* gave them, *read* gave him.
137. l. 9. *for* this lawgiver, *read* the lawgiver
139. l. 8. *for* Pompeiun, *read* Pompeium.
149. l. 6. *for* S. ii.—p. 32. *read* tom. ii.—p. 33. Ed. 1785.
150. l. 11. note, *for* cap. 3. *read* cap. 19.
160. l. 8. *for* friendly and hostile, *read* friendly, not hostile.
- id. l. 1. note, *for* Manvillon, *read* Mauvillon.
164. l. 11. *for* ranks, *read* rank.
165. l. 24. *for* rather that, *read* but rather that
186. l. 15. *for* us too, *read* us to be too
188. l. 10. *for* Maivuel, *read* Manuel.
286. l. 11. *for* by what the Phenicians said, *read* for example,
what the Phenicians said.
298. l. 3. *for* *perstringebas*, *read* *perstringebat*.
- id. l. 22. *for* T. Christ. Sturmus, *read* Johan Christ. Sturmus.
309. l. 15. *for* the air is, *read* that the air is

IN THE FRENCH QUOTATIONS.

150. l. 6. notes, *for* on l'appelle Angleterre, *read* on appelle
l'Angleterre
152. l. 4. notes, *for* dun part, *read* dune part
160. l. 5. id. *for* pourfent, *read* pouront.
188. l. 13. *for* "enfant encore n'a que," *read* "enfant qui
n'a encore que."
204. l. 8. *for* pareilles, *read* pareils
- id. l. 26. *for* Elle doit, *read* elle étoit
205. l. 4. *for* muré, *read* mure
- id. l. 6. notes, *for* ne sont dont, *read* ne sont donc
282. l. 21. *for* au faut, *read* en fait
286. l. 21. *for* je *read* j'ai
295. l. 3. *for* and, *read* &
300. l. 2. *for* influents, *read* influentes
314. l. 8. *for* hermie, *read* hermite.
322. l. 3. *for* de plus, *read* du plus
335. l. 6. *for* le vrai, *read* la vrai.
347. l. 23. *for* ne fasse, *read* se fasse

RECAPITULATION

1	1. The first part of the report is devoted to a general statement of the facts and circumstances of the case.
2	2. The second part of the report is devoted to a statement of the evidence in support of the facts and circumstances of the case.
3	3. The third part of the report is devoted to a statement of the law applicable to the facts and circumstances of the case.
4	4. The fourth part of the report is devoted to a statement of the conclusions reached by the court.
5	5. The fifth part of the report is devoted to a statement of the reasons for the conclusions reached by the court.
6	6. The sixth part of the report is devoted to a statement of the effect of the conclusions reached by the court.
7	7. The seventh part of the report is devoted to a statement of the effect of the conclusions reached by the court.
8	8. The eighth part of the report is devoted to a statement of the effect of the conclusions reached by the court.
9	9. The ninth part of the report is devoted to a statement of the effect of the conclusions reached by the court.
10	10. The tenth part of the report is devoted to a statement of the effect of the conclusions reached by the court.
11	11. The eleventh part of the report is devoted to a statement of the effect of the conclusions reached by the court.
12	12. The twelfth part of the report is devoted to a statement of the effect of the conclusions reached by the court.
13	13. The thirteenth part of the report is devoted to a statement of the effect of the conclusions reached by the court.
14	14. The fourteenth part of the report is devoted to a statement of the effect of the conclusions reached by the court.
15	15. The fifteenth part of the report is devoted to a statement of the effect of the conclusions reached by the court.
16	16. The sixteenth part of the report is devoted to a statement of the effect of the conclusions reached by the court.
17	17. The seventeenth part of the report is devoted to a statement of the effect of the conclusions reached by the court.
18	18. The eighteenth part of the report is devoted to a statement of the effect of the conclusions reached by the court.
19	19. The nineteenth part of the report is devoted to a statement of the effect of the conclusions reached by the court.
20	20. The twentieth part of the report is devoted to a statement of the effect of the conclusions reached by the court.

